TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 49.

WILLIAM SMITH ET AL., APPELLANTS,

vs.

WILLIAM H. CRAFT, STOUGHTON A. FLETCHER, AND FRANCIS M. CHURCHMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED SEPTEMBER 27, 1884.

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1 Pleas of the circuit court of the United States within and for the district of Indiana, begun and holden at the United States court-house in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-three, before the Honorable Thomas Drummond, judge of the seventh judicial circuit, and the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex-officio* judge of said circuit court.

WILLIAM SMITH, JOHN SMITH, OTTO C. LINZ, The Middletown Plate Company, Max Freund, Adolph Freund, Louis Kahn, Moses Kahn, and David Untermeier *v.* WILLIAM H. CRAFT, STOUGHTON A. FLETCHER, and FRANCIS M. CHURCHMAN.	7257.	Chancery.

Be it remembered that heretofore, to wit, at the May term of said court, on the 27th day of June, A. D. 1881, before Honorable Thomas Drummond and Honorable Walter Q. Gresham, judges as aforesaid, the following proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Messrs. Rooker & Hatch and Horace Speed, Esq., and file their bill of complaint herein in the words following, to wit:

2 Your orators, William Smith, John Smith, and Otto C. Linz, who are and for a long time past have been partners in business under the firm name of Wm. Smith & Co.; Max Freund and Adolph Freund, who are and for a long time past have been partners in business under the firm name of Max Freund & Co.; Louis Kahn and Moses Kahn, who are and for a long time past have been partners in business under the firm name of L. & M. Kahn; David Untermeier, who is & for a long time past has been in business under the name and style of Keller & Untermeier, who are all citizens of the State of New York, and the Middletown Plate Company, which is a corporation organized and existing under the laws of the State of Connecticut and a citizen of that State, complain of William H. Craft, Stoughton A. Fletcher, and Francis M. Churchman, who are citizens of the State of Indiana, and say—

That heretofore, to wit, on or about the 22d day of April, 1879, said Craft was and for a long time prior thereto had been in *in* business in the city of Indianapolis, dealing as a merchant in gold & silver ware and jewelry in his own name, having good standing and credit with your orators and among merchants in New York city & other places and making purchases on credit from

3 your orators and other merchants by reason thereof.

That at divers times during the latter part of the year 1878, and up to the — day of March, 1879, said Craft bought of said Middletown Plate Company, who knew and relied upon his good faith and known credit, goods and merchandise of the value of $667, on credits of — days, representing himself at the time as in good

financial condition and able to pay all his debts at maturity, which representations the Middletown Plate Company believe- and relied upon as true.

That at divers times during the year 1878, and up to the 26th day of March, 1879, said Craft bought of said David Untermeier, who knew and relied upon his good faith and known credit, goods and merchandise of the value of $1,227 on credits of — days, for which he gave his certain promissory notes hereinafter referred to.

That at divers times during the year 1878, and up to the — day of March, 1879, said Craft representing himself as in good financial condition & able to pay all his debts as they matured, which representations said Wm. Smith & Co. believed and relied upon as true, bought of said Wm. Smith & Co., who relied upon his good faith and known credit, goods and merchandise of the value
4 of $—, on credits of — days, for part of which he gave his notes hereinafter referred to.

That at divers times during the year 1878, and up to the — day of ——, 1879, said Craft bought of said Max Freund & Co., who relied upon his good faith and known credit, goods and merchandise of the value of $—, on credits of — days, and for part of which he gave his note dated Oct. 11, 1878, due at 6 months after date, for $437.25.

That at divers times during the year 1878, and up to the 17th day of February, 1879, said Craft bought of said L. & M. Kahn, who relied upon his good faith and known credit, goods and merchandise of the value of $—, giving therefor his three certain promissory notes, dated Nov. 11, 1878, for $241.64, $241.66, and $241.63, due at 5, 6, and 7 months, respectively, and his 4 other notes, dated February 17, 1879, for $283.75, $283, $283, and $283, due at 6, 7, 8, & 9 months, respectively.

That none of said notes or accounts have ever been paid, although payment thereof and of each of them hath been often requested.

That said Craft had bought of each of said firms on like
5 terms frequently prior to the purchases aforesaid, and had paid for them, & that your orators took judgment upon said notes and accounts, and executions were duly issued thereon as follows:

Wm. Smith & Co. took judgment Sept. 18th, 1879, in cause No. 25029 in the superior court of Marion county, Indiana, for $2,060.58. Execution was issued thereon Sept. 30, 1879, to the sheriff of said county, who, on the 17th day of March, 1880, made a return thereon of "*nulla bona*."

L. & M. Kahn took judgment January 8, 1880, in cause No. 25724 in said superior court for $2,122.26. Execution was issued thereon June 13, 1881, to said sheriff, who, on the 14th day of June, 1881, made return thereon of "*nulla bona*."

Max Freund & Co. took judgment Sept. 18, 1879, in cause No. 25030 in said superior court for $813.09. Execution was issued thereon Sept. 30, 1879, to said sheriff, who, on the 17th day of March, 1880, made return thereon of "*nulla bona*."

David Untermeier took judgment June 9th, 1881, in cause No. 7196 on the law side of this court, for $585. Execution was, on June

18, 1881, issued therefor to the marshal of this court, who, on the 18th day of June, 1881, made return thereon of "*nulla bona.*"

The Middletown Plate Company took judgment June 9,
6 1881, in cause No. 7198 on the law side of this court, for $760. Execution was issued thereon June 18th, 1881, to the marshal of this court, who, on the 18th day of June, 1881, made return thereon of "*nulla bona.*"

That all of said judgments remain in full force, unpaid & unsatisfied.

That on or about the 22d day of April, 1879, said Craft, who was then, and for a long time prior thereto had been, utterly & hopelessly insolvent and unable to pay his debts, as he and said Fletcher and Churchman then, & for a long time before that, well knew, of which fact (of his utter & hopeless insolvency and inability to pay his debts) they nor either of them had made known to your orators, but concealed the same from them and from the other creditors of said Craft; made a pretended sale of his stock in trade, including the goods and merchandise sold him as aforesaid by your orators to said Fletcher & Churchman, who were partners in business under the name S. A. Fletcher & Co., in payment of a pretended debt to a large amount, to wit, $30,000.00, alleged to be due by him to them; that after said pretended sale said Craft continued in pos-
session of said goods and made sales thereof, aggregating a
7 large sum, to wit, $20,000.00, and applied part of the proceeds to his own use and part to the use of said Fletcher & Churchman, with their consent & at their request, but in what proportions to each your orators are not informed and cannot learn, save through said defendants.

That said defendants and each of them knew at the times of said purchases and of said pretended sale that said Craft was utterly & hopelessly insolvent and unable to pay his debts, and that said purchases and others were being made in greater quantities than his trade justified, or required, under misrepresentations aforesaid and like misrepresentations by said Craft, and misapprehensions by your orators and other vendors as aforesaid as to said Craft's financial condition, and that said goods were purchased on credit, and at the time of said pretended sale were not paid for.

And your orators are informed and believe, and therefore so charge the truth to be, that said pretended sale was without consideration, and was effected by said defendants with the intent to
hinder, delay, and defraud your orators and other creditors of
8 said Craft, and that if any claim or debt was due and owing from said Craft to said Fletcher & Churchman or either of them, *the same were* the same was kept secret and concealed by them from your orators and others with the intent that said Craft should have & retain credit as aforesaid and make purchases as aforesaid, and that such goods so purchased should be turned over in payment of said debt, if any there was.

Wherefore your orators pray that the said pretended sale be adjudged and declared null & void as to your orators; that said defendants be decreed to be trustees for your orators and required to account for the proceeds of said goods & stock in trade included in

said pretended sale so far as is necessary to pay the claims of your orators, and for all proper relief.

Your orators would further show unto your honors that said defendants and each of them possess books, ledgers, journals, day-books, cash-books, check-books, blank-books, receipts, letters, accounts, and other writings showing the dealings between said Craft & said Fletcher & Churchman, the consideration for such pretended sale, the proceeds of said stock in trade after said pretended sale, the
9 *the* amount received by each therefrom, and the other matters contained in this bill, and that the same, if produced, will prove the allegations of this bill or some of them, and are material a nd relevant to the case of your orators.

To the end, therefore, that said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several corporal oaths, and according to the best and utmost of their several knowledge, remembrance, information & belief, full, true, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written they are respectively required to answer—that is to say:

Interrogatory 1. Was not said Craft, on the 22d day of April, 1879, and for a long time prior thereto, in business in his own name in the city of Indianapolis, dealing in jewelry, gold & silver ware, & having good standing and credit among merchants?

2. Did not said Craft deal as a regular customer with each of the plaintiffs during the periods and to the amounts as set out in this bill?

10 3. Were not judgments taken upon the notes and accounts arising from said dealings, and executions issued and returns thereon made as set out in this bill?

4. Was not said Craft, during all the year 1878 and up to April 22, 1879, insolvent and unable to pay his debts?

5. Did not said Craft and Fletcher & Churchman know during that period that said Craft was so insolvent?

6. Did not said Craft and said Fletcher and Churchman know that during said period said Craft was in good credit as a solvent man among merchants, including those with whom he was then dealing?

7. Did not said Craft and Fletcher and Churchman, on or about the 22d day of April, 1879, give out to the public, including said Craft's creditors & these complainants, that said Craft had sold to said Fletcher & Churchman his stock in trade in payment of a debt due from him to them?

8. Did not said stock then include the goods sold by com-
11 plainants to said Craft, as set out in the bill?

9. Was not said stock of about the value of $20,000?

10. Did said Craft, Fletcher, & Churchman, or either of them, before the 22 day of April, 1879, make known to these complainants, or either of them, or publish the fact that said Craft owed said Fletcher & Churchman a debt of $20,000 or any other sum; if yea, when, where, & to whom was it made known or published? State fully.

11. Did not said Fletcher & Churchman know during 1878 and

up to March, 1879, that said Craft was purchasing goods on credit, as set out in this bill?

12. Did not said Craft during the year 1878 & up to 1879 represent to these complainants or some of them by letter or by word of mouth that his financial condition was improving, & that he was able to pay his debts as they fell due, or make representations to that effect?

13. What debts, if any, did said Craft owe to said Fletcher & Churchman upon which said goods and stock in trade were taken or for which they were sold as aforesaid? If loans, state the
12 date & amount of the original and each renewal, if any; if notes, give copies of the originals and each renewal, if any, and all endorsements; state also the date and amount of each payment, if any, on either loans or notes.

14. Did said Craft have in 1878 or up to April 22, 1879, enough property to pay the debt alleged to be due to Fletcher & Churchman? If yea, at what date did he have such amount, of what kinds of property did it consist, where was it situate, and of what value was each kind?

15. Did not Craft after said alleged sale to Fletcher & Churchman continue in possession of said goods in the same place and under his old sign and sell and dispose of said goods?

16. Did not said Craft after said alleged sale to Fletcher & Churchman continue to sell said goods and turn over part of the proceeds to them and apply part to his own use?

Wherefore your orators pray that the writ of subpœna may issue out of the chancery of this court, under the hand of the clerk and the seal of the court, commanding said defendants, William
13 H. Craft, Stoughton A. Fletcher, and Francis M. Churchman, and each of them, to be and appear in this honorable court at a short day, and full, true, and perfect answer make of and concerning the matters and things in this bill alleged, and to abide, stand to, and perform the decree which to this court shall seem fit in the premises.

And your orators will ever pray, &c.

WILLIAM SMITH,
JOHN SMITH,
OTTO C. LINZ,
MAX FREUND,
ADOLPH FREUND,
LOUIS KAHN,
MOSES KAHN,
DAVID UNTERMEIER,
MIDDLETOWN PLATE COMPANY,
By —— ——,
By ROOKER & HATCH &
HORACE SPEED,
Their Solicitors.

ROOKER & HATCH,
HORACE SPEED,
Of Counsel.

And thereupon there issued out of the office of the clerk of said court a subpœna in chancery in the above-entitled cause in the words following, to wit:

UNITED STATES OF AMERICA, *District of Indiana:*

14 The President of the United States of America to the marshal of the district of Indiana, Greeting:

You are hereby commanded to summon William H. Craft, Stoughton A. Fletcher, and Francis M. Churchman, citizens of and resident in the State of Indiana, if they be found in your district, to be and appear in the circuit court of the United States for the district of Indiana aforesaid, at Indianapolis, on the first Monday in August next, to answer a certain bill in chancery filed and exhibited in said court against them by William Smith, John Smith, Otto C. Linz, Max Freund, Adolph Freund, Lewis Kahn, Moses Kahn, David Untermeier, and the Middletown Plate Company, citizens of and residents in the States of New York & Connecticut. Hereof *they* are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness Honorable Morrison R. Waite, Chief Justice of the United States, this 27th day of June, A. D. 1881, and in the one hundred and 5th year of the Independence of the United States of America.

[SEAL.] Attest: NOBLE C. BUTLER, *Clerk.*

15 And afterwards, to wit, on the 30th day of June, 1880, said subpœna in chancery was returned into the office of said clerk, with the following endorsement thereon, to wit:

DISTRICT OF INDIANA:

I received this writ at Indianapolis, in said district, at 3 o'clock p. m. June 27th, 1881, and served the same as follows: By reading to Francis M. Churchman and William H. Craft and handing each of them a true copy of this writ June 27, 1881, and by orders from plaintiffs' attorney I left a true copy of this writ for Stoughton A. Fletcher at Fletcher's Bank in the hands of Francis M. Churchman June 27, 1881, at Indianapolis, Ind.

WM. W. DUDLEY,
U. S. Marshal.
CHAS. FISKE, *Dep.*

And afterwards, to wit, at the May term of said court, on the 5th day of July, A. D. 1881, before Honorable Judges Thomas Drummond and Walter Q. Gresham, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, William H. Craft, by Mess. Herod
16 & Winter, his solicitors, and enters his appearance herein in the words following, to wit:

We hereby enter our appearance in the above-entitled cause for Wm. H. Craft, one of the defendants herein.

RITTER & RITTER.

And at the same time come the defendants, Fletcher & Churchman, by Messrs. Taylor, Rand & Taylor, their solicitors, and file their answer herein in the words following, to wit:

Your respondents, Stoughton A. Fletcher and Francis M. Churchman, for answer to so much of complainants' bill of complaint as they are advised is material for them to answer, state that it is true that their codefendant, William H. Craft, was, for many years previous to the 5th of April, 1879, engaged in merchandising in the city of Indianapolis, in the State of Indiana, and up to the said month of April, 1879, they believe that he was a merchant in good standing and credit in said city of Indianapolis and, so far as they are advised, elsewhere.

Respondents state that they have no information or knowledge that said Craft was indebted to the said several complaining firms and corporations in the sums set out in said bill or the manner in which any such indebtedness was created or what representations said Craft may have made in obtaining said goods or indebt-
17 edness, nor have they any information or knowledge of any judgments against said Craft, as set out in said bill, and they require strict proof of all said matters and allegations.

Respondents state that on the 27th December, 1878, said Craft was indebted to them, respectively, in the sum of $25,000.00, evidenced by his two notes, one for $12,500.00, payable in thirty days, and one for $12,500.00, payable in 60 days, and both given for borrowed money; and also, on the 20th day of Feb., 1879, for one other note, dated the — day of August, 1877, payable in 18 months, for about $7,313.00, which note was given by said Craft as the last payment for a stock of goods purchased by said Craft of George F. McGinnis, assignee, and these respondents took it up at said Craft's request, and stock of good- so purchased of said McGinnis was put in said Craft's general stock in trade and a part of it formed a part of the stock purchased by these respondents, as hereinafter set out.

Respondents further state that said three notes on Craft matured and he failed to pay the same, and respondents urged upon him payment, and said Craft represented that his stock of goods
18 was worth largely over and above all he owed and all he needed was time and he could pay all his debts. Respondents then asked him to have an invoice of his stock of goods, safes, and fixtures taken, and he did so, on or about the — day of April, 1879, and said inventory only amounted to about the sum of $33,000.00 and not more than enough to pay respondents' debt, and respondents then insisted upon payment of this debt, and on the 5th day of April, 1879, and after said inventory had been made, said Craft sold these respondents his entire stock in trade in full payment of his indebtedness to respondents, and these respondents then and there surrendered to him said three notes and immediately took possession of said stock of goods and had the lease of the store-room assigned to them, and they proceeded to sell out said stock of goods and finally sold all of them, and they deny that said stock of goods remained in possession of said Craft after the said sale, but they employed said Craft, at $150.00 per month, to assist in making sale of said goods,

and he continued in their employ about 7 months and no longer, and his salary for the said — months was paid by these re-
19 spondents, and they deny that he received any part of the proceeds of the sale of said goods after the said sale of the 5th of April, 1879, to these respondents.

Respondents deny that said sale was without consideration, or that there was any fraud or fraudulent intent on the part of Craft or these respondents to cheat, hinder, or delay the creditors of said Craft; but said sale was made in good faith, with the view and intent to pay an honest debt, as he had a right in law and equity to do.

They deny that they kept their debt secret, but they did not publish it to the world, nor is it usual or proper to publish who owes them, except when particularly called upon, and complainants never called upon them to state whether Craft owed them; and they deny that they kept the indebtedness a secret so that Craft could purchase of complainants on credit and pay these respondents.

Respondents further say that if any goods purchased of either of complainants were in said stock of goods they had no knowledge of the same, and they deny that he purchased goods of complainants or others in larger quantities than usual, or with the
20 view and intent to sell them to respondents to pay his indebtedness to them; but they state that they are informed and believe that said Craft, up to the time of making said invoice, on the — day of April, 1879, believed he was able to pay all his debts and have a surplus left; and these respondents state that up to that time they also believed he had ample property to pay his debts, but when they learned he had not they insisted on payment and he paid them in the sale of said stock of goods to them; and respondents state that said stock of goods were not worth enough in cash to actually pay them, but they took it in full payment, and by the transaction lost at least $12,000.00.

And said respondents, for answer to the first interrogatory, say that on the 5th day of April, 1879, and a long time previous thereto, — carried on business in his own name, dealing in jewelry & goldsmith's ware, and in good standing and credit among merchants and with his bankers up to about the first day of April, 1879, but after the 5th day of April, 1879, he did not carry
21 on a business in his own name, nor did he have good credit.

And for answer to the 2d and 3d interrogatories they say they have no knowledge or information on the subject.

And for answer to the 4- and 5th interrogaties they say that he was not considered insolvent in 1878, nor until about the first of April, 1879, but in point of fact respondents believe that he was insolvent so far back as the last half of 1878, but he or respondents did not then know it.

And for answer to 6th interrogatory respondents say they do not know whether Craft was in good credit with merchants with whom he was dealing, but he was in good credit with these respondents,

who were his bankers, and they have no reason to believe that he was not in good credit with his fellow merchants.

For answer to 7th interrogatory — say that they purchased said Craft's stock in trade on the 5th of April, 1879, and immediately took possession of the stock of goods and store in which they
22 were situated, and gave out and announced publicly that they had purchased said stock of goods in payment of Craft's indebtedness to them, and they proceeded immediately to sell said stock as fast as they could, at reasonable prices.

For answer to the 8th interrogatory they say they have no knowledge or information on the subject.

And for answer to the 9th interrogatory they say that it was not of the cash value of $20,000, though the invoice price was greater.

And for answer to the 10th interrogatory they say that they did not at any time previous to the 5th of April, 1879, advise any of the complainants of the amount of Craft's indebtedness to these respondents, nor were these respondents called upon for information of any kind on that or any other subject by them, and they believe they did not previous to 22d April, 1879.

And for answer to 11th interrogatory respondents say they have no knowledge or information on the subject.

23 For answer to the 12th interrogatory they say they have no knowledge or information on the subject.

For answer to the 13th interrogatory they state that when said respondents purchased said stock in trade said Craft owed them a note, dated the 27th day of December, 1878, payable in 30 days, for $12,500.00, a note of the same date and amount, payable in 60 days, and a note for about $7,313, dated the — day of August, 1877, payable in 18 months, and endorsed by this respondent, Churchman, which, at its maturity, was taken up by these respondents at said Craft's request and was held by them on the 5th of April, 1879, as so much of the indebtedness of Craft to them, but they have not the original notes and can't file copies.

For answer to the 14th interrogatory respondents say that up to about 1st of April, 1879, respondents believed Craft had enough property to pay respondents' debt held against said Craft, but whether at any time in 1878 or 1879, prior to 1st day of April, 1879, he absolutely had enough to pay it respondents do not know. He had a stock in trade supposed to be of greater value than it
24 really was—lease, store fixtures, safe, accounts, and house and lot, the last of which was mortgaged.

And for answer to the 15th and 16th interrogatories respondents state that said Craft did not continue in possession of said stock of goods after the 5th April, 1879, but these respondents took open and final possession of said stock of goods and store-room, opened a new set of books, and Craft had nothing to do with the stock, only as an employee of these respondents, at a salary of $150 per month, and he did not turn over the proceeds of sale to these respondents, nor did he keep part, so far as respondents are informed and believe, but the proceeds of sale were put into the drawer of the store, and these respondents took the proceeds each day and deposited them in

bank as their own money. The sign was not removed. We had nothing to do with it.

Wherefore they pray to be hence dismissed with their costs.

TAYLOR, RAND & TAYLOR,
Solicitors for Fletcher & Churchman.

UNITED STATES OF AMERICA, }
State of Indiana, Marion County, } ss:

25 Be it remembered that on the 5th day of July, 1881, personally appeared before the undersigned, a notary public in and for the county & State aforesaid, Francis M. Churchman, who, being duly sworn according to law, on his oath says that the statements of the foregoing answer are true, so far as related on his own knowledge, and what is from information of others he believe- to be true.

FRANCIS M. CHURCHMAN.

Subscribed and sworn to before the undersigned this 5th day of July, 1881.

[SEAL.]

EDWIN TAYLOR,
Notary Public.

And afterwards, to wit, at the May term of said —, on the 11th day of August, A. D. 1881, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, William H. Craft, by Mess. Ritter & Ritter, his solicitors, and files his answer herein in the words following, to wit:

Your respondent, William H. Craft, for answer to so much of the complainants' bill of complaint as he is advised is material for him to answer, states—

That he was a merchant, dealing and engaged in business
26 in the city of Indianapolis, in the State of Indiana, and had been for many years, up to April 17th, 1879; that at said date and some time previous thereto he was indebted to the persons named in the bill of complaint and to others, among whom was the firm of Fletcher, Churchman & Co.

That the complainants herein, when their respective credits were given to this respondent and said indebtedness incurred by him, each of said complainants knew that he was heavily indebted to Fletcher, Churchman & Co., which said indebtedness was of longer standing than that to either of said complainants.

That on the — day of April, 1879, this respondent did sell all his stock of goods, wares, and merchandise, including fixtures and lease, situated at his place of business, at No. 24 East Washington St., in the city of Indianapolis; that prior to said sale said Fletcher, Churchman & Co. were pressing this respondent for payment of their claims against him, and threatened to sue and collect by legal process unless the same were at once paid or secured.

That this indebtedness to said last-named parties was largely in

excess of the value of the aforesaid property included in said
27 sale; that to prevent legal proceedings, the sacrifice of said property at public auction under legal process, and for the purpose of paying his debt & liability to said parties, he proposed and offered to sell to them all the said property in consideration of the surrender by them to him of the promissory notes made by him to them, which they held and which were wholly unpaid, and the release of him from any and all liability of any kind to them, which proposition they accepted.

That on the — day of April, 1879, said sale was fully completed by the surrender of said notes and the release from liability, and said parties took possession of the property; that said promissory notes were as follows, to wit:

$7,313.19. INDIANAPOLIS, IND., *Aug.* 17, 1877.

Eighteen months after date we, or either of us, promise to pay F. M. Churchman, or order, seventy-three hundred & thirteen $\frac{19}{100}$ dollars and five per cent. thereon for attorney's fees, value received, without any relief from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note, and all defenses on the ground of extension of the time of its pay-
28 ment that may be given by the holder or holders to them or either of them, negotiable and payable at the First National Bank, Indianapolis, Indiana, with 7 per cent. interest until paid.

W. H. CRAFT.

Indorsed: F. M. Churchman.

$12,500. INDIANAPOLIS, IND., *Dec.* 27, 1878.

Thirty days after date I promise to pay to the order of —— —— twelve thousand five hundred dollars, and ten per cent. attorney's fees, with interest at ten per cent. per annum from date until paid.

Negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest, notice of protest, and non-payment of this note.

W. H. CRAFT.

$12,500.00. INDIANAPOLIS, IND., *Dec.* 27, 1879.

Sixty days after date I promise to pay to the order of —— —— twelve thousand five hundred dollars, with ten per cent. attorney's fees, with interest at ten per cent. per annum until paid.

Negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without relief from valuation or appraisement
29 laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest, notice of protest, and non-payment of this note.

W. H. CRAFT.

That there was no fraud, concealment, or collusion to defraud contemplated or intended by said sale on his part, nor did he know of any such intention on the part of such purchasers.

This respondent denies that said sale was without consideration; that he received any part of the proceeds of said property after it was sold by said parties or at any other time; that there was any intention to defraud his creditors thereby, or that he ever made any of the representations with which he is charged in said bill of complaint, or that he retained possession and control of said property after said sale.

And he denies specifically each and every allegation of fraud or intention to defraud his creditors contained in the bill of complaint in this cause. Wherefore he prays to be hence dismissed with his costs.

RITTER & RITTER,
For Respondent.

30 And said respondent for answer to the first interrogatory, says:

That up to and prior to April 5, 1879, to wit, since the year 1861, he was doing business in his own name in the city of Indianapolis, dealing in watches, jewelry, & silverware, and that during the whole time and up to the aforesaid date he believes he was in good standing and credit among merchants and bankers.

2d. For answer he says: Yes.

3d. For answer he says: Yes.

4. For answer says: That at no time did — believe himself insolvent until about April 1st, 1879, at which time the bank began to insist on an immediate settlement of his indebtedness to them.

5. For answer he says: No.

6. For answer his says: They believed him to be.

7th. For answer he says: That on or about the 5th day of April, 1879, this respondent did in good faith bargain and sell to Fletcher & Churchman his stock of goods, fixtures, and lease in con-

31 sideration of a surrender to him by them of certain notes held by them and amounting, with interest, to about $34,000.00, and that said Fletcher & Churchman did immediately take possession of said stock, which fact was openly and publicly stated.

8th. For answer he says: In this stock there may have been some of the goods purchased at sundry times from the complainants, as he had been dealing with most if not all of them for a long series of years.

9. For answer says: That while the stock had cost, perhaps, largely in excess of its appraised value, of near $33,000.00, yet the purchasers realized less than $20,000 from it.

10th. For answer says: That in May, 1877, he had been in New York and secured an extension upon his indebtedness of notes and accounts, and it was known to complainants that he was indebted to the bank. He does not now recollect that he was asked the amount of this indebtedness. At different times and occasions he

conversed with William Smith and Mr. Hurlbert, complain-
32 ants, and with Mr. Friedman, representing L. & M. Kahn; with Henry Untermeier, representing Keller & Untermeier; with Thos. Davis, representing Middletown Plate Co., and with others the names and dates whereof this respondent cannot now recollect, but it was known to each and every one of complainants that he was indebted to the bank, as he had made no concealment of it.

And it was well and publicly known that the respondent, F. M. Churchman, was the endorser on the notes given to McGinnis, assignee, for deferred payment in the Bingham stock.

He was never asked by either the bank or complainants as to the specific amount of his indebtedness to either the one or the other, as in the course of my business career of 18 years I was more or less indebted for goods, and most of the time sought and secured accommodations from the bank.

11th. For answer would say that he has no certain knowledge or information on the subject.

12th. For answer respondent says he has no recollection of having represented to these complainants, either by letter or by word of mouth, that his financial condition was improving, but that
33 he was one of those who thought the bankrupt law — back the return of pro-perity, and believed that a repeal of the law would bring about a better business and enable him to turn his stock and pay his debts as they fell due; and he often made the statement, in conversation with business men of New York and elsewhere, that he would regard his financial condition improved if the law was repealed; that he made no representations to secure credit, as his greatest difficulty was to resist the importunity of complainants, through their traveling salesmen, to purchase their wares. They simply regarded me good, as I did myself, and when I refused to go to the hotel to look at their stock they would bring their trunks to the store and insist upon my buying. The larger the amount the happier they would be.

13. For answer he says that at the time of the sale of said stock to Fletcher and Churchman this respondent was owing them two notes of $12,500 each, both dated Dec. 27, 1878, and due in 30 and sixty days, respectively, after date, with ten per cent. interest; and one note for $7,313.19, dated Aug. 17, 1877, and given for unpaid purchase-money on the Bingham stock, and endorsed by F.
34 M. Churchman, and taken up by said Fletcher and Churchman at the request of this respondent, and which was due to them; said note was payable eighteen months after date and bore 7 per cent. interest. Copies of all these notes are given in the body of the plea of this respondent.

14. For answer respondent says that prior to April 5th, 1879, he believed at all times that his stock of merchandise, notes, and accounts, which he believed to be of the value of about $50,000, and his real estate, part lot 8, square 22, in the city of Indianapolis, which he believed to be worth about $15,000, together with his

future prospects of trade, would enable him to discharge his indebtedness when the effects of the panic had subsided.

15. For answer respondent says that after the sale to Fletcher & Churchman I only remained in charge of the stock as their employee at a stipulated salary of $150 per month. As the sale embraced the lease and fixtures they believed more could be realized from them by selling them at the same room, no change as
35 to the signs was suggested by them. Respondent did not have any part or parcel of the stock or proceeds after the sale to Fletcher & Churchman other than the salary of $150 per month before mentioned. The money received was entered upon a new set of books and deposited each day to the credit of the bank.

16. For answer respondent says, No, as stated in preceeding answer; the only part or pay I received was the salary of $150 per month.

UNITED STATES OF AMERICA, }
State of Indiana, Marion County, } *ss:*

William H. Craft, being first duly sworn, on his oath says that the statements in the foregoing answers are true so far as they are related of his own knowledge, and what is from the information of others he believes to be true.

WILLIAM H. CRAFT.

Subscribed and sworn to before me this 11th day of August, 1881.
[SEAL.] BEN. W. RITTER,
Notary Public.

36 And afterwards, to wit, at the May term of said court, on the 1st day of October, A. D. 1881, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Mess. Rooker & Hatch and Horace Speed, Esq., their solicitors, and file their replication herein in the words following, to wit:

The Replication of Complainants to the Answers of William H. Craft, Stoughton A. Fletcher, & Francis M. Churchman.

This repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the answers of said defendants, for replication thereto say that they do and will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is untrue, uncertain, and insufficient to be replied unto by these repliants—

Without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

37 All which matters and things these respondents are ready to aver and prove as this honorable court shall direct, & humbly pray as in and by their said bill they have already prayed.

HORACE SPEED,
Compl'ts' Sol'r & of Counsel.

And afterwards, to wit, at the November term of said court, on the 25th day of November, A. D. 1881, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and, upon his motion, it is ordered by the court that the above-entitled cause be, and the same is hereby, referred to William P. Fishback, master in chancery, who is directed to take the evidence herein and report the same, with his findings thereon, to the court with all convenient speed.

And afterwards, to wit, at the November term of said court, on the 15th day of April, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, master in chancery, and
38 files his report herein, together with the evidence accompanying the same, in the words following, to wit:

The undersigned, the master to whom this cause was referred to take the evidence and report the same, with his conclusions, now respectfully reports as follows:

The bill attacks a preference which Craft gave to two of his creditors—Fletcher & Churchman. Craft was a dealer in watches and jewelry at Indianapolis, and Fletcher & Churchman were his bankers. The complainants are creditors of Craft, Eastern merchants and manufacturers, from whoom Craft made purchases of goods. At the time of the transfer by Craft to Fletcher & Churchman of Craft's stock of goods Craft was indebted to the complainants in the sum named in the bill. The date of the transfer was April 5th, 1879. At that date Craft owed Fletcher & Churchman tw- notes of $12,500 each, both dated Dec. 27, 1878—one due in 60 days, the other in 30 days, after date—and one note for $7,313.19, dated Aug. 17, 1877, due 18 mo's after date. The amount due April 5th, 1879, was over $33,000.

Craft's invoice of April 1st, 1879, revealed to him the fact
39 that he was badly embarrassed and probably insolvent. His whole stock and accounts were worth little, if anything, in excess of his debt to his bankers. His real estate consisted of a dwelling-house worth something over $8,000, with a mortgage on it for $6,000.00, and two lots which were not worth the incumbrances on them.

Soon after the April invoice Craft called upon his attorney, Captain Ritter, and was about to make a general assignment under the State law for the benefit of his creditors. Mr. Churchman was sent for, and he came to Capt. Ritter's office and urged Craft to do what he could to secure the bank debt. He reminded Craft that when he had been in great need of funds the bank had accom-odated him, and that Craft had said he would protect the bank if anything ever occurred by which he was not able to pay his debts; that if he met with losses he would secure the bank if the bank woul- loan him money from time to time. Craft admitted he had made the

promises and wanted to secure the debt. It was finally agreed
40 that Craft should transfer his stock to Fletcher & Churchman in discharge of his indebtedness to them. A bill of sale was accordingly drawn, which will be found on page 27 of the evidence. It was written by Captain Ritter, signed and acknowledged by Craft, and delivered to Churchman. By a mistake the name of Churchman alone was put in the bill, but it is agreed that it may stand as if the firm name of Fletcher & Churchman had been used.

Immediately after the paper was executed the parties, Craft, Churchman, and Captain Ritter, proceeded to Craft's store, and an announcement was made to the employees that Craft had sold the stock to Fletcher & Churchman. Mr. Churchman spoke to the employees individually and *and* agreed to pay them wages at the rate they were then receiving until further notice. No additional employees were engaged. The old sign, "Harry Craft," remained outside over the door and no new sign was put up. The style, "Harry Craft, agent," was used thereafter. Of the goods purchased after the transfer to keep the stock fresh most of them were billed to "Fletcher and Churchman," though some were sent to "Harry Craft, agent." The proceeds of each day's sales were depos-
41 ited with Fletcher & Churchman. The business was carried on in regular course until August, when they began selling goods at auction, closing out the stock in October. The total amount realized was about $20,000, or about $13,000 less than the debt due the bank.

Craft remained in charge under the terms of the bill of sale all the time, and was paid at the rate of $150 per month.

The above is the substance of the material evidence, but the evidence itself is brief, consisting of the depositions of Mr. Craft and Mr. Churchman, and the court and counsel can readily refer to it and supply any omission in the report.

Counsel for complainant attacks the transaction between Churchman & Craft for fraud, and insist that the proviso in the bill of sale, which requires Churchman to retain Craft in his employ at the rate of $150 as part of the consideration of the transfer, vitiates the sale. The law is pretty well settled that a reservation by the vendor or debtor of an interest in the property transferred to a creditor by way of preference will defeat the transfer when it is attacked by other creditors. But, in the opinion of the master, this is a differ-
42 ent case. Churchman agreed to pay Craft for his services an amount which, for aught that appears in the evidence, was a reasonable compensation. If nothing had been said in the bill of sale about Craft's employment and if he had not been employed until there had been a delivery of possession his employment thereafter woul- not have vitiated the sale. At most it is a circumstance which, with other facts, might tend to prove fraud. All that can be reasonably claimed, as the master views the question, is that the proviso is a badge of fraud which may be explained. But when it appears, as it does in this case, that the debt secured or preferred was a *bona fide* debt of an amount much greater than the value of the property taken in discharge of it, and that both parties to the

transaction swear that no fraud was intended, the master concludes that the sale was valid.

By the statutes of Indiana the question of fraudulent intent in such cases as this is a question of fact. 1 Davis St., 1878, p. 506.

The evidence in this case does not establish the fraudulent intent as the master views it, though there were circumstances attending the transaction which, together with the terms of the bill of sale, were well calculated to excite suspicion.

Respectfully submitted,

WILLIAM P. FISHBACK.

Master's fees for taking evidence	$24 80
Hearing case & writing report, 3½ days	
Total	

43 UNITED STATES OF AMERICA, *District of Indiana:*

In the United States Circuit Court in and for the District of Indiana.

WILLIAM SMITH *et al.*
vs.
WILLIAM H. CRAFT *et al.* } No. 7257.

Before Hon. W. P. Fishback, master in chancery, February 24th, 1882.

Appearances: For plaintiffs, Mess. Rooker & Hatch, Horace Speed, Esq.; for defendants, Mess. Taylor, Rand and Taylor.

W. S. Garber, shorthand reporter; office, room 3, over 21 East Washington St., Indianapolis, Ind.

44 WM. H. CRAFT, being first duly sworn by the master according to law, testified as follows:

Examination-in-chief:

Questions by HORACE SPEED, Esq.:

1 Q. State your name, age, occupation, and residence.

A. W. H. Craft; age, forty-eight; occupation, jeweler; residence, Indianapolis.

2 Q. How long have you been engaged in business as jeweler in Indianapolis?

A. Since the spring of 1860.

3 Q. How long have you been doing business alone?

A. From 1860 to 1869 I was alone. I had a partner at two different times. From 1872 to 1879 I was alone.

4 Q. Now I will read from the complaint, and if what I read are the facts you may so state. (Reading): "William Smith and John Smith and Otto C. Linz are and for a long time past have been partners in business under the firm and name of William Smith & Co. Max Freund and Adolph Freund are and for a long time have been partners in business under the firm and name of Max Freund
45 & Co. Louis Kahn and Moses Kahn are and for a long time past have been partners in business under the firm and name

of L. and M. Kahn. David Untermeier is and for a long time past has been in business under the name and style of Keller and Untermeier; are all citizens of the State of New York doing business in New York city, and the plaintiff, The Middletown Plate Company, is a corporation organized and existing under the laws of the State of Connecticut, and a citizen of that State." Is that correct? Do you assent to that?

A. Yes, sir.

5 Q. Did you purchase of the Middletown Plate Company in 1878 and 1879, and before the first of April, 1879, goods amounting to $667.00 on credit? (Handing the witness the ledger.)

A. I cannot remember the amount.

6 Q. Please refer to your ledger and just state the amounts of that purchase.

A. Those purchases run back here to 1877. It is a running account and covers thousands of dollars in amount. It never was closed.

46 7 Q. Can you state the amount that remains unpaid?

A. I think it is the amount that you specified; I don't know. It is not footed up, but I have a list of them. I have been buying and paying from time to time, and the balance is the amount named. The last item purchased is February 10, 1879, $2.49; the next is February 10th, $137.45. Then in January, on the 21st, $2.86; on the 28th, $10.00; on the 28th, $198.00, and on the 28th again, $93.00.

8 Q. Now, give the amount and date of the last credit you paid them.

A. December 27th, 1878, acceptance paid for $304.43; December 28th, acceptance paid, $175.65.

9 Q. Now, turn to Keller and Untermeier, and just state the amounts that you have bought from that firm before the first of April which remain unpaid.

A. Well, I am not able to state that. It is the same situation as the others. It runs over a longer time, and I must have given them more money, but the sum that they recovered judgment for is correct, whatever that was. I think my account with them

47 would run about ten years, and *and* it covers between fifty and a hundred thousand dollars.

10 Q. You mean it commenced in 1866?

A. No, sir; not in 1866. It may have commenced in 1866, too. The account in this book commences in 1876. I think it probably commenced in 1869.

11 Q. And the amount of Untermeier's judgment?

A. That shows the amount not paid.

12 Q. Those goods were purchased on credit?

A. Yes, sir.

13 Q. That is, $1,227.00. Now state the last credits and the last purchases.

A. Those we always settled by notes. The last item is February 13th—$6.37.

14 Q. And in March?

A. March 26th, $768.45; another one of the same date, $19.87.

15 Q. Now the credits.

A. Then the credits are by note; settled up by note on March 26th. There was three notes covering the amount. The amount was divided up into three notes.

16 Q. That is, the twelve hundred and odd dollars?

A. Yes, sir.

48 17 Q. Those notes remain unpaid?

A. Yes, sir.

18 Q. Were you not paying the notes along as they came due?

A. We had been paying along before.

19 Q. You had been paying those notes along, too?

A. Yes, sir.

20 Q. When were the last payments made on the notes?

A. I cannot tell that—on these notes—none of those were paid. There are other notes here—November 16th. The notes were taken right from the stubs, and they were charged with them at that time.

21 Q. Do your accounts show when you paid anything on those notes?

A. No, sir; that woul- be in the bills receivable account.

22 Q. Were they paid at maturity?

A. Yes, sir.

23 Q. Now, when were those notes given?

A. March 26th, 1879.

24 Q. When were the other notes given?

A. November 16th, 1878.

25 Q. When did they mature?

A. In four, five, and six months.

26 Q. Were they all paid?

A. They were all paid but the November note, and then

49 in July there were other notes given. Take the year 1878. In February the notes were given, and they were paid, $157.00, $157.00, and $158.00. They were paid at maturity. They were given on February 14th, at ninety days, and four months, and six months, and were all paid at maturity. The next batch were given July 1st, 1878, and were all paid, amounting to $400.00, at four months, $400.00 at five months, $200 00 at five months, and $439.00 at six month; all were paid. The next batch of notes were given in November, 1878, and two of those were paid, but the six months' notes were not. The last payment, I think, was March 16th, $171.00.

27 Q. Now give the others.

A. No, sir; the others had not come due yet.

28 Q. Is that the only November note that was paid?

A. Yes, sir.

29 Q. How much was it?

A. $171.00, in March, 1879.

30 Q. At that date no other notes were matured?

A. No, sir.

31 Q. Now turn to Wm. Smith & Co.'s account.

A. I have it.

50 32 Q. Now show the amount of goods that you purchased from William Smith & Co., and the dates of such purchases as remain unpaid for.

A. I cannot give you just the amount; I could say as I did in the other cases; I cannot give you the dates; they were settled for by note; the account commenced in 1878.

33 Q. Had you been dealing with him before?

A. Yes, sir; I think I had been; I am not positive about it.

34 Q. Now commence at the last purchase.

A. March 4th, $21.25; March 12th, 1879, $8.00; February 28th, $304.27; January 28th, $7.00; January 11th, $161.13; December 23d, 1878, $63.15; December 16th, $470.58. The last payment was made on notes on March 12th. The last one fell due March 12, 1879; it was $200.37.

35 Q. And there were no other notes due at the time?

A. No, sir.

36 Q. When did you pay any before that?

A. Just a month before that; the 12th of February, $210.00; on the 12th of January, $200.00; and one before that, $201.40; one month before that, $200.00; and a month before that again,

51 $200.00, running back to September.

37 Q. Now, what was about the amount of your dealings with them from the commencement of that account in March, 1878?

A. About $3,200 in 1878.

38 Q. Now, Max Freund & Co.'s account. Please state the amounts and dates of the last purchases.

A. February 8th, 1879, $288.27; January 28th, $7.00; 1878—November—was the last purchase—November 14th, $52.00; October 18th, 437.55.

39 Q. How long had you been dealing with Max Freund & Co.?

A. Ever since 1860.

40 Q. Please state now the payments on that account—when the last payment was made—and state about the amount you purchased from that house during that time.

A. It would be very hard to tell.

41 Q. You have some idea of how much it would be a year, haven't you?

A. I used to trade with Mr. Freund when he run around

52 and carried a pack on his back. I could not tell you how much I have bought of him since I began.

42 Q. State the last payment that was made him.

A. There was paid January 15th, $68.63. The next one paid was in April, 1878, $475.00, and in March, $477.65—that is, the spring before—1878.

43 Q. On October 11th did you give to Freund & Co. your note for $437.25?

A. Yes, sir; October 11th.

44 Q. That was paid?

A. No, sir; that had not come due yet; it was a six months' note.

45 Q. It was not due until April?

A. No, sir; April 11th.

46 Q. Is that the debt that you were sued on?

A. That is part of it.

47 Q. Then did Max Freund & Co., on September 18th, 1879, in the superior court of Marion county, take judgment upon their account for $813.09?

53 A. I believe that they did; I don't know the date.

48 Q. And execution was issued thereon September 30th, 1879, to the sheriff of said county, who, on the 17th of March, 1880, made return thereon of no property, or *nulla bona?*

A. I don't know anything about the return. I know that execution was out and that he took no property.

49 Q. And there was nothing made on that execution?

A. No, sir.

50 Q. Now, please turn to the account of L. and M. Kahn?

A. I have it.

51 Q. State the last purchases you made of L. and M. Kahn?

A. February 17th, 1879, $1,132.75; next, November 9th, 1878, $724.93; August 27th, $260.75; May, 1878, $742.00; March 8th, 1878, $376.75.

52 Q. How long had you been dealing with that firm?

A. I think about the same length of time as with Freund—ten or fifteen years, I guess.

53 Q. Now, please show the payments—the last payments.

54 A. They were paid by note; the last payment of a note. I think the last note was paid March 11th, 1879, $241.64. The last note was March 11th, $270.75, not $241. The next one before that was paid November 11th, $371.00. October 11th, $371.00; September 11th, $328.75; April 16th, $111.00; March, 16th, $100.00. That is as far as this book goes back.

54 Q. Now, state about how much you dealt with that house a year?

A. It is a house I have dealt very largely with for years. Their traveler came around and I bought of him about four times a year, and their bill would sometimes run as high as $3,000.00 at one time in watches.

55 Q. I suppose you dealt some years there to the extent of from $3,000.00 to $5,000.00 ($8 to 15,000) with them?

A. Up to 1874 or 1876 I bought more largely of him than at any time after that. Our note was afterwards paid up to the time the sale was made.

56 Q. You mean up to the time you sold out your stock?

A. Yes, sir.

57 Q. All these goods were purchased on credit?

55 A. Yes, sir.

58 Q. About what was the length of those credits?

A. They were willing to sell them at almost any credit—from six to nine months or a year.

59 Q. In September, 1879, did William Smith & Co., the complainants, obtain a judgment in cause No. 25029, in the superior court of Marion county, against you upon an account for $2,060.58?

A. I don't remember the date. They took a judgment; I remember that.

60 Q. And as to the amount?

A. The amount is correct, I believe.

61 Q. And execution was issued thereon September 30th, 1879, to the sheriff of that county, was it not?

A. Yes, sir; I suppose so.

62 Q. And nothing was made on that execution?

A. No, sir.

63 Q. Did L. an- M. Kahn take judgment January 8th, 1880, cause No. 25724, in the superior court, against you on that account for $2,122.26?

A. I believe so, but I could not fix the date.

56 64 Q. An execution was issued thereon June 13th, 1881, to the sheriff, and nothing was made thereon?

A. That is my understanding.

65 Q. And David Untermeier took judgment on June 9th, 1881, in cause No. 7196, in the circuit court of the United States, for $1,585.00, did he not, against you on this account?

A. Yes, sir; I believe that is correct.

66 Q. And execution was issued thereon June 18th, 1881, to the marshal of that court, and no property made thereon?

A. I suppose that is correct.

67 Q. And the Middletown Plate Company took judgment June 9th, 1881, in cause No. 7198, in the United States court, against you on this account for $760 on their account?

A. That is about it.

68 Q. And execution was issued thereon June 18th, 1881, to the marshal of that court, and on the 8th of June, 1881, he made return thereon of *nulla bona?*

A. Yes, sir.

69 Q. All of said judgments were unpaid and unsatisfied.

57 In 1877, were you interested in a purchase of a stock of goods known as the Bingham stock of jewelry?

A. I bought it in 1877.

70 Q. What time in 1877 was that purchase made?

A. About August 27th, I think.

71. Q. How was that paid off?

A. It was paid off one-fourth cash and the balance in deferred payments at six, twelve, and eighteen months.

72 Q. Who furnished the cash?

A. I furnished the cash.

73 Q. Was that your own money?

A. The bank honored my check for it.

74 Q. Did you have the money in the bank as your own?

A. I had it to my credit.

75 Q. That was your own money?

A. That was my own money.

76 Q. What bank was that money in?

A. Fletcher's bank.

77 Q. Now, the different payments that you spoke of—the six,

twelve, and eighteen months' payments—were they secured or how, and on what credit were they given?

A. They were given to McGinnis, the assignee, with Mr. Churchman as endorser.

78 Q. They were notes?

A. Yes, sir.

58 79 Q. You state in your answer that you sold out in April of 1879, in payment of three notes, which you set out in your answer; I will ask you if those three notes are the three notes given for these deferred payments or extended payments?

A. All of them are not; one of them is the last note due for the bankrupt stock; that was the one at eighteen months. It is $7,300 and some odd dollars; it was due in February.

80 Q. That was the fourth of the deferred payments?

A. Yes, sir.

81 Q. Was there three or four deferred payments?

A. Three; that purchase was made in or about August; it was made August 17th not the 27th.

82 Q. Have you those notes?

A. Yes, sir; the last one was paid by the bank at my request (producing notes).

83 Q. Have you the other notes of this series?

A. No, sir.

84 Q. Have you the other two?

A. Yes, sir; I have them.

59 85 Q. Now, this note for $7,313.00, the third or last of the deferred payments you mention, is made to F. M. Churchman by yourself and endorsed by F. M. Churchman; was that note, at the time it was made or at the time of that sale, turned over to the assignee of the Bingham stock?

A. Yes, sir; that was done. Mr. Churchman agreed to endorse for me, and that was General McGinnis' suggestion, that it be made in that way.

86 Q. Was that note paid by yourself or by Mr. Churchman when it became due?

A. It was due in February, and I requested the bank to take it up for me, which they did.

87 Q. You requested S. A. Fletcher & Co.'s bank to take it up?

A. Yes, sir.

88 Q. Mr. Churchman is a partner in that bank?

A. I believe so.

89 Q. Did you give a new note to that bank or to Mr. Churchman upon the payment of this note?

A. No, sir; I think not—they just held that one.

60 90 Q. Your answer also refers to another note, dated December 27, 1878, for $12,500, signed by yourself. Please tell me for what that note was given, and to whom.

A. It was given to the bank. I do not know of any better way to explain that than to show the bills receivable running back to 1876. In paying off my debts East I had to go into bank from time to time and other notes had been given. For instance, I made a

loan in bank in November, 1876, of $7,000.00; that was November 17, 1876—and then in February, 1877, there was a loan of $6,000.00, and the $7,000.00 former loan was renewed; that increased it to $13,000.00.

91 Q. And those loans were made for what length of time?

A. They were made always at ninety days and renewed from time to time; and then in July again this note for $6,000.00 was renewed and then there was a new loan August 15th of $2,500. There was another loan on October 23d of $6,500.00. That is not quite a full list of them because sometimes when I went into bank and made loans it was not entered. I had notes come due and neglected it a little sometimes and the bank would notify me.

61 92 Q. That makes $22,000.00.

A. All I know now is that the amount was $25,000. There were several notes, and they were all put into two notes.

93 Q. Was this $3,000, not accounted for here, interest on these other notes?

A. No, sir; there was no interest. The interest was paid up from time to time.

94 Q. In advance?

A. Yes, sir.

95 Q. What was the rate of interest you paid?

A. Ten per cent., I believe, most of the time; that is what they charged those days.

96 Q. That was taken out—in other words, the notes were discounted?

A. Yes, sir.

97 Q. Can you tell about when this additional $3,000.00 was obtained?

A. No, sir; I cannot. I think, though, it was about the first of May, in 1878. I had to go to New York for an extension, and I think it was about that time. I will not be positive about that. All I can testify positively to is that the notes owing the bank amounted to the sum set forth in those two notes; that they together make up the true amount owed the bank.

62 98 Q. Were they all due at the time these notes of December 27th were given?

A. I think so. I think they were all due at the time they were consolidated into two.

99 Q. Some of them had been a little time overdue?

A. They were extended from time to time. The loans were all made at ninety days and were taken up then and the interest paid and new notes made for them.

100 Q. These notes which you have here are not made payable to any one at all. You understood when you gave these notes, and it was a fact, was it, that the debt — due Fletcher and Churchman as a bank, and these were given in payment of that debt?

A. Yes, sir; in payment of that debt.

101 Q. The first one of those notes at thirty days became due on the 26th day of January; why was that not renewed?

A. Well, I cannot say as to that. It was carried.

102 Q. Theretofore had the notes been paid promptly or been renewed promptly at maturity?

A. Yes, sir.

63 103 Q. And there was no special reason why this note was not renewed as theretofore?

A. No, sir. I cannot recall just the reason they were not renewed when they were due.

104 Q. The note due at sixty days became due on the 25th of February; was that note renewed for the same? Was that note renewed for the same cause as you suggested as to the first?

A. Yes, sir; now, my recollection about it is that they were not renewed. I had not taken my yearly invoice, and, I think, it was deferred on that account—to take that invoice on the first of April—and they were just carried along.

105 Q. What effect had your taking the invoice?

A. It displayed the fact to me that I was in pretty deep water.

106 Q. Why were the notes not renewed?

A. I suppose the bank had their own reason for it. I don't know why.

107 Q. You had not asked them to delay?

A. No, sir. I had not.

108 Q. Nor they did not ask you to renew?

A. No, sir.

109 Q. At whose suggestion were these notes taken at thirty and sixty days time?

A. I think the bank set that themselves.

110 Q. They made out the notes?

A. Yes, sir.

64 111 Q. And you signed them?

A. Yes, sir.

112 Q. When was your annual invoice that you have spoken of taken?

A. It was taken, I think, about the first of April.

113 Q. Was that your usual time for taking an invoice?

A. Yes, sir; about that time.

114 Q. Was it completed about the first of April?

A. I think so.

115 Q. You spoke of being in deep water then. Do I understand you to mean that you concluded that you would not be able to go on longer in business?

A. I concluded about the time when the invoice was taken, in April, that if my creditors pushed me I would go under; that is the the conclusion I came to.

116 Q. What action did you take then, if any, in the transaction of your business?

A. The bank had been speaking to me about my notes—these notes that were due—and I went to Capt. Ritter and laid the case before him.

117 Q. What did he advise?

Objected to; question withdrawn by Mr. Speed.

65 118 Q. What action did you take in the case?

A. Well, the bank had been my friends for years, and I felt duly bound to see them out of it and see what could be done to secure their debt.

119 Q. Before you did that did you make any arrangements towards making an assignment?

A. Well, it was talked of. I went to Captain Ritter and told him I thought I had probably better make an assignment.

120 Q. Were any of the papers mad- out for an assignment?

A. I cannot answer as to that. It was left in Captain Ritter's hands. There may have been.

121 Q. You say it was left in his hands. Did you leave any directions with him to make out an assignment?

A. I left him to advise me, and I took his advice in the matter.

122 Q. About what time was that?

A. That was about April. I think about the 4th or 5th.

124 Q. Did you have any report from him then as to——

Objected to. Question withdrawn by Mr. Speed.

66 125 Q. When did you conclude that instead of making this assignment you would make a sale outright to Fletcher & Churchman?

A. It was on April 5th, 1879.

126 Q. After having left this matter with Capt. Ritter?

A. Yes, sir.

127 Q. You made that sale on the 5th of April?

A. The 5th of April, I think, 1879.

128 Q. Did you have a written bill of sale?

A. Yes, sir.

129 Q. Have you that with you?

A. I have.

130 Q. Will you let me see it, please?

(Witness produced bill of sale, which was marked Exhibit "A," and is in the words and figures following, to wit:)

67 "EXHIBIT A."

U. S. Circuit Court.

SMITH *et al. vs.* CRAFT.

W. S. G., rep.

Whereas William H. Craft, of the city of Indianapolis, Marion county, State of Indiana, is indebted to Francis M. Churchman, of said city, in about the sum of thirty-one thousand dollars, evidenced by three certain promissory notes, dated, respectively, each December, 1878, two for the sum of twelve thousand five hundred dollars each and the other for the sum of seven thousand three hundred and sixty-three dollars, due, respectively, in thirty and two in sixty days after date *after date*, and signed by W. H. Craft:

Now, in consideration of the full payment, satisfaction, and surrender of said indebtedness and notes, said Craft does hereby bar-

gain, sell, and deliver to said Churchman all his stock of watches, diamonds, jewelry, silverware, fixtures, and property of every kind now owned and used by said Craft in his business at No. 24 East Washington street, in said city.

Also all the interest of said Craft in the lease held by him to said premises.

And the further consideration that said Churchman shall
68 employ said Craft in said business at the rate of one hundred and fifty dollars per month so long as said Churchman shall carry on or continue said business.

In witness whereof I have hereunto set my hand and seal this the fifth day of April, 1879.

WILLIAM H. CRAFT.

STATE OF INDIANA, } ss:
Marion County, }

Before me, B. W. Ritter, a notary public in and for the State and county aforesaid, William H. Craft subscribed and acknowledged the foregoing bill of sale this the fifth day of April, 1879.

[SEAL.] B. W. RITTER,
Notary Public.

131 Q. Who drew up that written contract or written bill of sale?

A. Capt. Ritter.

132 Q. Did you direct him to?

Objected to. Question withdrawn by Mr. Speed.

133 Q. This bill of sale purports to be, to state, "And whereas William H. Craft is indebted to Francis M. Churchman, Craft bargains, sells, and delivers to Churchman all his stock of
69 watches, &c." This is the bill of sale under which you turned over to Fletcher and Churchman?

A. Yes, sir.

134 Q. Why was the bill made to Francis M. Churchman; was he considered as a trustee for the partnership?

A. Yes, sir; I understood that he took it in in trust for the bank.

135 Q. You intended not saying Francis M. Churchman?

A. I left that all to Mr. Ritter, knowing he was a lawyer and I was not.

136 Q. This bill of sale was signed by whom—yourself alone?

A. Yes, sir.

137 Q. Did Fletcher and Churchman or either of them signe it?

A. I don't remember as to that.

138 Q. This purports to convey all your stock in merchandise and property of every kind owned and used by you in your business at 24 East Washington street, Indianapolis, and your interest in a lease to those premises. How long a lease was that?

A. I think it was a two years' lease; I think it expired a year after that time.

139 Q. After this sale was made—after this bill of sale was
70 made—it was delivered to Mr. Churchman?

A. Yes, sir.

140 Q. For the bank?

A. Yes, sir.

141 Q. After that was delivered did you continue at that place of business selling goods?

A. Mr. Churchman came in and took formal possession of it and notified all the men in the house, as the terms of the contract so required, and then employed me to take charge of the store.

142 Q. How did he take formal possession?

A. He came in and Capt. Ritter just announced to them—had the hands all brought down, and announced to them that a change had been made.

143 Q. What was the sign over your store, if any, before?

A. "Harry Craft," I think, was over the door.

144 Q. Was it not "Craft & Co.?"

A. No, sir; it was not Craft & Company then.

145 Q. Did that sign remain as it was before?

A. It did.

146 Q. It continued there how long, probably?

A. It continued there, I think, probably for a year afterwards.

71 147 Q. Did you advertise the goods for sale in your own name as "Harry Craft?"

A. Not as "Harry Craft," but as "Harry Craft, agent;" I think that is the way they were advertised when they were advertised afterwards.

148 Q. The advertisement did not state "agent" for whom, however?

A. No, sir.

149 Q. And you continued selling there under this contract?

A. Yes, sir.

150 Q. What property beside that which is covered by this bill of sale did you have at the time you sold your stock, in April, 1879?

A. I had my house property, this real estate, and the notes and accounts.

151 Q. Notes and accounts were not collected in the bill of sale?

A. No, sir.

152 Q. Your home property was real estate?

A. Yes, sir.

155 Q. How much was it incumbered?

A. There was a mortgage of about six thousand dollars on it.

156 Q. What became of that property?

72 A. That property was sold by the assignee, and was bid in by my wife. Adams was the assignee after they forced me into an assignment, and it was taken and sold, and she bid it in.

157 Q. Did you go into bankruptcy after that?

A. No, sir; I made an assignment under the State law.

158 Q. With Harry Adams as your assignee?

A. Yes, sir.

159 Q. What above the incumbrance, if anything, did that piece of real estate sell for?

A. It didn't sell for any above except for about enough to pay the costs of the advertising and selling.

160 Q. Was that at public sale?

A. Yes, sir.

161 Q. Was that property in a good part of the city?

A. Yes, sir.

162 Q. What was that property probably worth on the 5th of April?

A. We could hardly tell what it was worth then, but it was appraised afterwards for making a new loan and putting a new mortgage on it to take up the old one; it was appraised at $10,000.

163 Q. What other property, if any, had you in this State?

73 A. None at that time except as I have stated.

164 Q. What was the value of your book accounts at that time?

A. I don't remember as to the amount of the accounts.

165 Q. How long was it after the 5th of April that you made your assignment under the State law?

A. I made the assignment, I think, in August.

166 Q. About how much had you collected of your book accounts between the 5th of April and the assignment in August?

A. I don't remember as to that.

167 Q. Can you approximate it at all?

A. I cannot. There was not a great amount. I had a great many bankrupt accounts in there.

168 Q. Was there one thousand dollars of collectible accounts?

A. No, sir.

169 Q. What payments did you made to Mr. Churchman from August, 1877, until April the 5th, prior to the sale, upon the amounts which you had borrowed from them or had become indebted to them for those three notes with which the Bingham stock was bought?

74 A. I do not remember. I cannot remember as to what was paid. I know in 1876, about the time the loans from the bank commenced, I was probably owing $50,000 in New York. The outcome appeared that I was robbing the bank to pay them down there, but I expected that after the bank was made — that business woul- revive and I would be able to go on and pay out; I don't remember whether any of them were paid or not.

Whereupon the further examination of Mr. Craft was adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

WILLIAM H. CRAFT—examination-in-chief resumed by HORACE SPEED, Esq.:

170 Q. Can you tell me what your invoice of property showed you on the 1st of April, 1879.

A. Somewhere in the neighborhood of $33,000.00, I think, or about that.

171 Q. And you don't remember what it showed you as to book accounts?

A. No, sir; I don't. I think the good accounts were estimated at about a thousand dollars or along there somewhere.

75 172 Q. Does that include your bills receivable?

A. The notes and accounts—I think it did.

173 Q. What did it show that you owed at that time—how much?

A. The invoice did not include bills receivable, but simply the goods; just what was sold to Mr. Churchman—notes and accounts collectable—$1,000.00.

174 Q. Now, as to your liabilities, what did they show? How much did you owe Churchman and the bank and how much did you owe other parties.

A. I owed the bank the face and interest of the notes—somewhere between $33,000 and $35,000; I don't just remember the whole amount. I owed them the amount of the face of those notes and the interest?

175 Q. Who was your residence mortgaged to?

A. To Hannah M. Lindley and sister, of Baltimore.

176 Q. Had you any other real estate anywhere?

A. Not at that time?

177 Q. Was that bill of sale delivered to Churchman before he took possession of the goods?

76 A. I don't remember as to that—whether it was delivered to him at Mr. Ritter's office or when he came down to take possession of the store.

178 Q. It was delivered to him that same day?

A. Yes, sir,

179 Q. Do you remember whether it was made out at the time he took possession?

A. Yes, sir; made out and signed before him.

180 Q. And he took possession under that bill?

A. Yes, sir.

181 Q. After that sale to Fletcher and Churchman did you continue there and to do the buying of the goods for the store?

A. Yes, sir.

182 Q. Did you use the proceeds of the sale in making new purchases for the purpose of keeping up the stock?

A. I was instructed by Mr. Churchman to keep up the stock and not let it run down, and to pay cash for whatever was bought.

183 Q. While acting under that bill of sale you bought goods from different parties, paying cash for them?

77 A. Yes, sir.

184 Q. Were those goods billed as bought by you?

A. They were billed, all I think, to Fletcher & Churchman. There may have been sometimes they might have billed them to Harry Craft, as agent, but I think most of them were sent — Fletcher & Churchman.

185 Q. They were sent directly to your store, No. 24 East Washington street?

A. They were sent to the store; yes, sir.

186 Q. You made payment for these goods yourself directly?

A. Well, I paid for them by check. I checked on the bank as agent for Fletcher & Churchman.

187 Q. Did you note on your check that you were the agent of Fletcher and Churchman or did you simply sign them as agent?

A. Always in every instance as agent for Fletcher & Churchman.

By the MASTER:

188 Q. Did you say on the check "Agent for Fletcher & Churchman" or did you sign them just "Harry Craft, agent?"

Q. I may have signed them "agent." I don't know whether I wrote "Fletcher & Churchman" on it or not.

By Mr. SPEED:

78 189 Q. During all the time that you continued the sale of said goods under this bill of sale your old sign remained over the door, did it not?

A. I believe so.

190 Q. When you sold goods at retail to different parties did you in making out the bills use the old bill-heads?

A. Yes, sir; I had no new ones printed, but I signed them as agent.

191 Q. You didn't have any new ones printed?

A. No, sir.

192 Q. And you receipted the bills to correspond with the bill-heads?

A. I signed them as "agent," if there was any signed; whether there were any bills made out or not I don't know. It is very seldom I make out a bill in selling jewelry. I don't know whether any bills were made out or not. Sometimes we sell to parties that want them, but not often.

193 Q. What did your invoice for 1878 show as to your assets and liabilities?

A. I don't remember.

194 Q. Have you any means of ascertaining?

A. I may have the invoice; I don't know. Sometimes we let it run two years before an invoice was made—two or three. I
79 don't know whether I can find the record. I think when I went East, in 1878, for an extension, about the first of May, I think it was, and the invoice was made before that.

195 Q. Can you approximate the amount of your assets and liabilities according to that invoice?

A. My recollection is that it run some place between fifty and sixty thousand dollars in assets.

196 Q. And how as to your liabilities?

A. The liabilities were probably ten or twelve thousand dollars less.

197 Q. In those assets of fifty or sixty thousand; and did you include all your real estate?

A. Yes, sir.

198 Q. And also included all your personal property?

A. Yes, sir.

199 Q. Was your house mortgaged at that time?

A. Yes, sir; I think that was the invoice; that we estimated everything; everything was declining so then that the value of everything was estimated a- the regular cost. My real estate was mortgaged in 1869; has been under mortgage ever since.

200 Q. Now, on April 5th, 1879, what was the amount of your liabilities other than the mortgage debt you spoke of and the debt to Fletcher & Churchman?

A. $15,009.54.

80 201 Q. You- liabilities in 1878——

A. (Interrupting.) I want to correct a statement right here; I see from this paper that I did own two lots at that time that I was not aware of, in Oak Hill addition, on which I had paid $1,600.00, and I let Ingram Fletcher have them back for the $400.00 in notes. They were to cost $2,000.00.

202 Q. Your liabilities in 1878 you spoke of as being about $45,000. How were they made up?

A. In Eastern debts and to the bank.

203 Q. Give me the amount you owed the bank?

A. I cannot give you the exact amount.

204 Q. Is there any way of getting that?

A. We might possibly find it by looking over the old papers.

205 Q. Would not your ledger show it?

A. No.

206 Q. Would your ledger show the amount that you owed the bank at the time?

A. No, sir; all the account I had of the bank debt was the bills payable account.

207 Q. In August, 1877, how much did you owe the bank after having made the Bingham purchase?

A. I think I owe- them about $18,000.00 at that time.

208 Q. Besides the amount of the Bingham purchase?

A. Besides the notes; I did not owe them anytihng on that.

81 209 Q. How long had you been owing this $18,000.00 to the bank?

A. I cannot tell you how long that had been accumulating.

210 Q. It had been some time.

A. I don't know whether it had run back as far as 1872 or not. When I bought my partner out I borrowed some money of the bank at that time. There were more or less accommodations received every year from the time I went into business.

211 Q. Between August, 1877, and April, 1879, how much did you pay as interest to the bank?

A. There is nothing to show that, unless I could tell by my old check stubs. I presume Mr. Churchman's books would show what he has received — interest from me.

212 Q. Do you know how much as principal—not by renewing notes—but how much you actually paid to the bank in cash during that time to reduce your indebtedness?

A. I don't know whether I paid anything or not.

Cross-examination:

Questions by Judge RAND:

213 Q. If I understand you rightly, on the 5th day of
82 April, 1879, you owed S. A. Fletcher & Co. the three notes that have been given in evidence here, two for $12,500, dated December 27th, 1878, one at thirty and the other at sixty days; and also a note, dated August 17th, 1877, at eighteen months, payable to the order of F. M. Churchman and endorsed by him, for $7,313.19. You owed the bank those three notes?

A. Yes, sir.

214 Q. The bank took up the $7,000.00 note at your request and held it?

A. Yes, sir.

215 Q. And you took an invoice of your stock of goods on the first, or about the first of April, 1879?

A. No, sir.

217 Q. Now, up to that time, what was your belief as to your ability to pay your debts?

A. Well, I had the belief all the time of a hopeful business man, that I would be able to pull through and bridge over.

218 Q. When you found out that you were not able to pay all your debts, then you concluded to sell out your stock of goods to Fletcher & Churchman in payment of those three notes you have spoken of?

A. That was the conclusion I came to after consulting with my attorney.

83 219 Q. And you did it?

A. Yes, sir.

220 Q. You sold out to pay this debt and it was an honest debt that you owed him?

A. Yes, sir.

221 Q. In making that sale, had you any intention to cheat, hinder, delay, or defraud your other creditors?

A. None in the least. I thought it was the best thing that could be done.

222 Q. You did it for the purpose of giving a preference to Fletcher & Churchman, as you understood you had a right to do?

A. Yes, sir.

223 Q. These notes, the last two for $12,500.00, were for borrowed money in the bank?

A. Yes, sir.

224 Q. Now, when you sold out to Fletcher and Churchman, did you go with Mr. Churchman to the store when he took formal possession?

A. After the written agreement was made—after the transfer was made at Capt. Ritter's office—Capt. Ritter——

225 Q. (Interrupting.) What do you mean by the transfer?

A. The bill of sale was written there and the stock was turned over to Mr. Churchman at the store.

226 Q. How long after the bill of sale was written?

84 A. It was all the same day, I believe.

227 Q. Didn't you go right straight from Capt. Ritter's office to the store?

A. Yes, sir.

228 Q. And didn't you tell him he could have possession? And didn't he take possession?

A. He took formal possession. I surrendered it up to him.

229 Q. Didn't he notify the employees that the stock belonged to Fletcher & Churchman?

A. Yes, sir.

230 Q. Did he make any arrangement with them as to their pay?

A. He left that to me, as agent, to employ whatever force was necessary.

231 Q. Did you, as agent, control the matter for them after that?

A. Yes, sir.

232 Q. Up to the time of selling out the goods?

A. Yes, sir.

233 Q. Now, from that time on did you have any other—any interest whatever in the stock of goods?

—. ——.

234 Q. Now, from that time on did you receive any money from Fletcher & Churchman in any way, except your pay of $150.00 per month?

A. I was instructed by—no, sir; I did not.

235 Q. What was done with the money that was taken in each day?

85 A. It was deposited in bank.

236 Q. To whos- credit?

A. To the credit of S. A. Fletcher & Co.

237 Q. What was the object in buying any more goods?

A. There was frequently goods in some lines of stock would become broken and had to be filled up to sell those that were left to better advantage.

238 Q. Was it not just for the purpose of enabling you to sell the balance of the stock?

A. Yes, sir.

239 Q. How long did you carry on the store for Fletcher and Churchman?

A. From April until October, I think.

240 Q. Then, after that didn't you carry it right along and sell off the balance of the stock at auction?

A. Yes, sir.

241 Q. Now, was that stock of goods worth any more than the amount of the debt that you owed S. A. Fletcher & Co.?

A. No, sir. I suppose they were worth about the amount of it, but it proved afterwards they were not worth so much.

242 Q. Were these notes surrendered to you at the time you gave the bill of sale?

A. Yes, sir; given to me at the time.

243 Q. And you have had them ever since?

86 A. Yes, sir.

244 Q. And they were actually paid by your turning that stock of goods over to them?

A. Yes, sir.

245 Q. Do you know how much was actually realized on the stock of goods for Fletcher an- Churchman?

A. I think something in the neighborhood of $20,000.00.

246 Q. Have they ever received anything else from you in any shape or form?

A. No, sir; nothing except that stock of goods.

247 —. That is, on account of these notes?

A. No, sir; nothing except the stock of goods.

Re-examination:

Questions by HORACE SPEED, Esq.:

248 Q. Yo- spoke of Mr. Churchman taking possession. How did he take possession? What did he do in taking possession down there?

A. He came in there when I surrendered the stock to him; he and Capt. Ritter came in with me, and then he called all the men up, and the hands, and notified them that the store was the property of the bank, and that he had employed me to take
87 charge of it for them, and that I was under their control, acting as agent.

249 Q. And was that all?

A. Yes, sir.

250 Q. Judge Rand was asking you in regard to what payments you had received, and you began making some explanation, saying "I was instructed"—and he then stopped you. What was that you were going to say?

A. I was going to say that I was instructed to pay the hands and myself per week to live on; to pay myself at the same time I paid the other hands in the store.

251 Q. And you began selling out at auction in August, in 1879?

A. Yes, sir.

252 Q. Before that, from the 5th of April, 1879, then, you were selling in the ordinary course of business, as you had done before?

A. Yes, sir.

253 Q. You mean, then, that the goods that you turned over in April, not counting these that you also bought to keep up the stock, but the goods that you turned over in April, brought by auction and by sales in the ordinary course of business $20,000.00?

88 A. I think all that was sold—there was very little bought.

254 Q. That $20,000.00 includes those that were purchased to replenish the stock from time to time, as well as those originally turned over to Mr. Churchman on the bill of sale?

A. Yes, sir.

254½ Q. And the goods that you bought, then, the new goods, were purchased with the proceeds of the other goods?

A. Yes, sir; there was very few of them bought.

255 Q. How much of these goods were sold at auction—about what was the amount?

A. I don't remember.

256 Q. Cannot you approximate it at all?

A. No, sir; I cannot.

257 —. Can you from any record you have show that?

A. If we had the old blotters here that we used there in the auction sales I might tell something about it. That may be there yet, probably, on record.

258 Q. Was it half the stock?

A. Very probably it amounted to $8,000 or $10,000. It may have been that.

259 —. At how much of a reduction were those goods sold at auction?

A. Well, I am not able to say as to that.

89 Recross-examination:

Questions by Judge RAND:

260 Q. I will ask you if Mr. Churchman, when he went there and you gave him possession of the stock, didn't call the employees together and ascertain from each one of them how much they had been receiving from you?

A. Yes, sir.

261 Q. And didn't he tell each one of them then that he would give them the same wages until further notice?

A. Yes, sir.

262 Q. Now, I do not know whether you know or not, but I will ask you how this bill of sale happened to be drawn in the name of F. M. Churchman?

A. No, sir; I don't know. I know this, that I was selling the stock to the bank.

And further the witness saith not.

Mr. SPEED: Now, I will put in evidence the three notes referred to by Mr. Craft, two for $12,500.00 and one for $7,313.19.

90 The said notes wer- admitted in evidence, being in the words and figures following, to wit:

$12,500. INDIANAPOLIS, IND., *Dec.* 27, 1878.

Sixty days after date I promise to pay to the order of —— —— twelve thousand five hundred dollars, and ten per cent. attorney's fees, with interest at ten per cent. per annum from date until paid. Negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity.

The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

W. H. CRAFT.

$12,500. INDIANAPOLIS, IND., *Dec.* 27, 1878.

Thirty days after date I promise to pay to the order of —— —— twelve thousand five hundred dollars, and ten per cent. attorney's fees, with interest at ten per cent. per annum from date until paid.

Negotiable and payable at Fletcher's Bank, Indianapolis, In-
91 diana, value received, without any relief whatever from valuation or appraisement laws. Interest on this note has been paid to maturity.

The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

W. H. CRAFT.

772 16 int'r.
$7,313 19

8,085 35

INDIANAPOLIS, IND., *August* 17, 1877.

Eighteen months after date I, we, or either of us promise to pay F. M. Churchman or order seventy-three hundred and thirteen $\frac{19}{100}$ dollars, and five per cent. thereon for attorney's fees, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note, and all defenses on the ground of any extension of the time of its payment. Negotiable and payable at the First National Bank of Indianapolis, Indiana, with 7 per cent. interest until paid.

W. H. CRAFT.

Endorsed on back: F. M. Churchman.

92 F. M. CHURCHMAN, being first duly sworn by the master according to law, testified as follows:

Examination-in-chief:

Question- by HORACE SPEED, Esq.:

1 Q. What amount of principal was paid on the indebtedness of Craft to your bank from August, 1877, when the Bingham stock was purchased, up to April 5th, 1879?

A. From that time Mr. Craft did not reduce his debt. It took his receipts to take up and meet his obligations to McGinnis, and it was renewed from time to time, and my recollection is that the debt then was about $20,000.00, and that he paid us ten per cent. per annum on that amount, whatever it was. The interest was ten per cent. from that date up to the other date at which it was paid.

2 Q. Will you also state now whether he paid up the interest on that or not?

A. Yes, sir; during that time he paid the interest. The interest did not increase the debt; he paid that.

93 3 Q. But, as I understand Mr. Craft to say, the interest was ten per cent. and payable in advance?

A. Yes, sir; paid at every thirty or sixty or ninety days, in advance.

4 Q. Then the interest on these overdue notes of which he spoke this morning—the interest was not paid for the time for which they were overdue?

A. No, sir; that accrued interest from the time they matured up to this sale was part of the consideration of the purchase.

Cross-examination:

Questions by Judge RAND:

5 Q. On the 5th of April, 1879, how much did Harry Craft owe S. A. Fletcher & Co., and how was the indebtedness evidenced?

A. The debt was two notes, $12,500 each, dated December 27, 1878, payable in thirty and sixty days after date, with ten per cent. interest after maturity, and one note for $7,313.19, dated August 17th, 1878, with seven per cent. interest from the date of it and up to its maturity and ten per cent. afterwards.

6 Q. Have those notes ever been paid to you; and, if so, how, when, and where?

A. Those notes were paid for by the purchase of the jewelry
94 establishment of W. H. Craft, on Washington street, and these notes were surrendered in payment for it.

7 Q. When you purchased that establishment did you take possession of it or not?

A. I did. The papers were executed in Mr. Ritter's office, and we went immediately from Mr. Ritter's office down to the store and Mr. Craft surrendered the possession to me; he went with me and surrendered possession and I took possession.

8 Q. What did you do in the store there?

A. I went in and called all the employees together and told them that I had purchase- for the bank the store of Mr. Craft; that I had employed Mr. Craft and what I was to pay him; and I asked Mr. Shannon how much Mr. Craft was paying him, and he told me. I told him I would continue paying him that until further notice; then Mr. Craft and I went to a young man farther back in the store and went through the same performance with him—I have forgotten his name—and from there we went up into a back room, in the rear of the store, into the watchmakers' department, and *and* took possession and employed his employees there.

95 9 Q. Well, from that time until the goods were sold out, who had possession?

A. The bank had.

10 Q. Had Mr. Craft any interest in the stock of goods from that time on?

A. Not a cent.

11 Q. You simply paid him a salary of how much?

A. $150.00 p'r month.

12 Q. Did you pay the employees?

A. We did.

13 Q. What was done with the proceeds of the sales?

A. They were brought daily into the bank from the store.

14 Q. Deposited?

A. Yes, sir; and were deposited. I had on the books an account opened for them. I called it the "Craft stock," and charged the purchase-money against that account, and then the receipts were credited on that stock account as they came in, so as to keep a distinct account of it.

15 Q. Did Mr. Craft get any of the proceeds of that after he sold it to you, in any shape or form?

A. No, sir.

16 Q. Now, in making that purchase, did you made the
96 purchase with the view of attempting to hinder, defraud, cheat, or delay the creditors of Mr. Craft, or only to secure your own honest debt to the bank?

A. I bought the stock to secure the debt of the bank, with no intention or purpose to defraud, or cheat, or of hindering any creditors or anybody else.

17 Q. It was a transfer to you for the purpose of giving you a preference in the payment of an honest debt that he owed you.

A. He did; yes, sir.

18 Q. If he had any other purpose you don't know it?

A. No, sir; I don't know it, and I don't think he had.

19 Q. How happened this contract to be drawn in your name individually?

A. It was a lawyer's mistake.

20 Q. The contract was for the benefit of the bank?

A. Yes, sir.

21 Q. For the benefit of S. A. Fletcher & Co.?

A. Yes, sir; I supposed it was drawn in the name of S. A. Fletcher & Co., but I didn't notice it at the time; I have noticed it since.

22 Q. It was to pay this very same debt?

A. Yes, sir.

97 23 Q. How much was the invoice of stock at the time you purchased it?

A. In the neighborhood of $30,000.

24 Q. Up to the first of April what information had you on the subject, as to whether Mr. Craft was solvent or insolvent until that invoice was made?

A. My information was that he was solvent and was good for all his debts, and I knew nothing to the contrary until he advised me, or sent a messenger for me, to meet him at Mr. Ritter's office the day on which this transfer was made.

25 Q. When these notes fell due—these $12,500.00 notes—why were they not renewed?

A. They were not renewed because I was very anxious at that time to have the debt reduced, and told Mr. Craft to let those notes remain just as they were in the hope that his sales would justify him in making some credits on them to reduce the debt before I renewed it again. At each time he thought he would be able to do it, and they run along in that way until I purchased the stock. Times were very dull, and Harry was expecting every day better times and

to commence making sales and to be able to pay something
98 or other on that debt.

26 Q. How much did you pay McGinnis for this $7,000.00 note?

A. $8,085.35.

27 Q. At the time of its maturity was that paid?

A. Yes, sir.

Re-examination:

Questions by HORACE SPEED, Esq.:

28 Q. You say that on April the fifth a messenger was sent for you to come to Mr. Ritter's office. What did you find on getting to Mr. Ritter's office?

A. It was either a messenger or a note from Mr. Craft to meet him at Mr. Ritter's office. I found Mr. Craft there. He said that he was in trouble; that he had finished his inventory and was satisfied that he could not pay his entire indebtedness, and it was a question in his mind, under the circumstances, what he had better do; that he had gone to consult Mr. Ritter as a friend and as his attorney. I reminded Mr. Craft of the many conversations that we had had together; that he had always said he would protect me if anything ever occurred by which he was not able to pay his debts—if he met with any losses or anything of the kind that he would secure
99 me if I would loan him money from time to time. He said he had made those promises, and he believed he was solvent all the time and was able to pay me and he wanted to pay me and wanted to secure my debt. Then I told him I did not know of any other way to do it. There was some general conversation on the subject of my buying the stock and making what I could out of it, and he sold me the stock.

29 Q. Yo- say you were anxious about that time to reduce the debt; when these two large notes came due you were anxious to reduce the amount of Mr. Craft's indebtedness. Now, what objection had you to the debts remaining as it was as to amount?

A. The debt had been running for some time, and the time that I had adjusted that debt and fixed up the notes had passed and we had allowed the notes to run past due until they had all become due at that date. Then Mr. Craft told me that he would cease buying goods and fix these notes up in thirty or sixty days, and
100 he had no doubt but that he could sell enough goods to pay part of the debt in that time. They matured and he was disappointed, and he didn't do so, and I let those notes remain there still in hopes that he might be able to do it.

30 Q. When did he say he proposed to quit buying goods?

A. At the time those notes bear date, that he would then commence paying our debt.

Question by Judge RAND:

31 Q. Do you mean that he would entirely quit buying goods?

A. No, sir. He meant that he would reduce his stock and pay

part of this debt and carry a small stock. He told me at the time he gave me those notes that he thought his stock would inventory over sixty thousand dollars.

Question by Mr. SPEED:

32 Q. That was in December?
A. Yes, sir.

And further the witness saith not, and the evidence was pronounced closed by the master.

101 INDIANAPOLIS, *Feb. 28th*, 1882.

I hereby certify that the above and foregoing is a true and correct and impartial report of all the evidence submitted to the master on the hearing of the said cause at the time and place aforesaid.

W. S. GARBER, *Reporter.*

And afterwards, to wit, at the November term of said court, on the 20th day of April, A. D, 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit.

Come, now, the complainants, by Mess. Rooker & Hatch and Horace Speed, their solicitors, and file their exceptions to the masters report herein, in the words following, to wit:

102 Exceptions taken by the complainant's in this cause to the report made therein on April 15, 1882, by W. P. Fishback, Esq., master in chancery of this court, to whom this cause was referred to take *take* the evidence & report the same with his findings thereon to this court by the rule made in said cause 188.

1st exception. For that said master has not reported that at the time of the loan by Fletcher & Co. to Craft, and at divers times thereafter it was secretly agreed between said defendants that if at any time said Craft should become insolvent he would prefer said Fletcher & Co. over his other creditors, and that said sale was made pursuant to such prior agreement.

2d exception. For that the said master has not reported that the bill of sale made by Craft to Fletcher & Co. expressly stated and conclusively showed that part of the consideration of said sale was that Fletcher & Co. should employ said Craft thereafter "in the carrying on of that business at $150 per month so long as said Churchman shall carry on or continue said business."

103 3d exception. For that the said master has not found that the making and the execution of the secret agreement that if said Craft became insolvent he would prefer said Fletcher & Co. was a fraud upon his other creditors.

4th exception. For that the said master has not found that the sale was rendered fraudulent and void as to creditors by the provision therein as part of the consideration that said Craft should be employed by said Fletcher & Co. at $150, as therein provided.

5th —. For that the said master has found that the evidence does not establish fraudulent intent, whereas he should have found that

the bill was sustained by the evidence and that the complainants were entitled to a decree in accordance with the prayer of their bill.

6th exception. For that the said master has not found that said Craft after said sale did in fact remain in possession of said goods; that this was *prima facie* fraudulent, and that the burden of proof was upon the defendants to show the transaction to be fair, and that the defendants had failed to make such proof.

104 In all which particulars the report of the master is, as complainants are advised, erroneous, and the said complainants therefore appeal *therefore* to the judgment of the court.

ROOKER & HATCH,
HORACE SPEED,
Sol's & of Counsel for Complainants.

And afterwards, to wit, at the May term of said court, on the 9th day of June, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, and the court, having heretofore heard the argument of counsel, doth sustain the exceptions to the master's report in the above-entitled cause, and said report is hereby overruled.

And come now the defendants, Fletcher & Churchman, and by their solicitors move to recommit said cause to the master with special instructions; which motion is in the words following, to wit:

Come now the defendants, Fletcher & Churchman, and move the court to recommit this case to the master commissioner, William P. Fishback, with instructions to report specifically to the court—

105 1st. How much Harry Craft owed each of the complainants on the 5th of April, 1879.

2d. How much he owed Fletcher & Churchman on April 5th, 1879.

3d. How much he owed other parties on the 5th of April, 1879.

4th. What was the cash value of the goods sold on the 5th April, 1879, by Craft to Fletcher and Churchman.

5th. How much did Fletcher and Churchman realize in cash for said stock of goods.

6th. What was the reasonable value of the services of Craft worth per month under the contract with Fletcher and Churchman.

7th. What amount of the property remained in the hands of Fletcher & Churchman unsold, and what amount of money, if any, being proceeds of the property sold, remained in their hands unapplied to the debt on 30 September, 1879; also what property, if any, remained in Fletcher & Churchman's hands at the date of the filing of the bill herein, to wit, on the 27 day of June 1881.

And afterwards, to wit, at the May term of said court, on the 29th day of June, A. D. 1882, before Honorable Walter Q. Gresham,

106 the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, Francis M. Churchman, by his solicitors, and come also the complainants, by their solicitors, and the

court, having already announced its finding in favor of complainants, suggests to the court that on the — day of February, 1882, his codefendant, Stoughton A. Fletcher, sold his interest in the firm of S. A. Fletcher & Co. to Stoughton J. Fletcher, and thereafter said Stoughton A. Fletcher died testate, confirming, by his will, the sale aforesaid; and thereupon the defendant, Churchman, moved the court that the said Stoughton J. Fletcher be substituted as a defendant in this suit in the place of said Stoughton A. Fletcher; which motion is overruled.

And afterwards, to wit, at the May term of said court, on the 3d day of July, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, Francis M. Churchman, by Taylor, Rand and Taylor, his solicitors, and files his substituted motion to recommit the above-entitled cause to the master in chancery in the words following, to wit:

107 Comes now the defendant, Francis M. Churchman (his co-defendant having departed this life), and moves the court to recommit this cause to the master, William P. Fishback, with in structions to find and specifically report to the court—

First. How much the defendant, William H. Craft, owed each of the complainants on the 5th day of April, 1879.

Second. How much he owed the defendants, Fletcher and Churchman, on said 5th day of April, 1879.

Third. How much he owed to other persons on said 5th day of April, 1879.

Fourth. What the cash value was of the goods sold by Wm. H. Craft to Fletcher & Churchman on the 5th day of April, 1879.

Fifth. What sum was realized by Fletcher and Churchman from the sale of said goods over and above their reasonable expenses of sale.

Sixth. What amount of the property remained in the hands of Fletcher and Churchman unsold, and what amount of money, if any, being the proceeds of the property sold, remained in their hands unapplied to their debt on the 30 day of September, 1879; and also

108 what remained in Fletcher and Churchman's hands at the date of the filing of the bill herein, to wit, the 27th day of June, 1881.

Seventh. Whether or not the defendant, William H. Craft, had made a voluntary assignment of all his property under the laws of the State of Indiana for the benefit of all his existing creditors before the rendition of any of the judgments in the complaint mentioned in favor of the defendants.

Eighth. In case the evidence already taken will not enable him to make such findings, then to take such additional evidence as may be offered by the parties, respectively.

TAYLOR, RAND AND TAYLOR, AND
BAKER, HORD, & HENDRICKS,
For F. M. Churchman.

And afterwards, to wit, at the May term of said court, on the 4 day of July, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Francis M. Churchman, by his solicitors, and also come the complainants, by their solicitors, and said Churchman moves the court to recommit this cause for re-sons specified in said motion, and the court being advised in the premises, overrules said motion.

109 And afterwards, to wit., at the May term of said court, on the 26th day of July, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Simon Brothers and Company and R. Wallace & Son, by Horace Speed, Esq., their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

George W. Simons, John F. Simons, George W. Simons, Jr., Frederick M. Simons, and Peter B. Simons, co-partners in business under the firm name of Simon Bros. & Co., and citizens of the State of Pennsylvania, represent to the court that between Sept. 23, '78, and Jan. 20, '79, inclusive, the nar-ators sold to the defendant Craft goods and merchandise to the value of 399.62, with interest thereon from (average) March 1, 1879, a bill of particulars of which is filed herewith as part hereof, marked Exhibit "A;" that said sum is long past due and wholly unpaid.

Wherefore the nar-ators pray leave to file this their intervening petition in the above-entitled cause, and to share in the trust
110 fund arising in this cause to the creditors of said Craft, and for all other and proper relief.

GEORGE W. SIMONS,
JOHN F. SIMONS,
GEORGE W. SIMONS, JR.,
PETER B. SIMONS,
Partners as Simons Bros. & Co.,
By HORACE SPEED,
Their Solicitor.

HORACE SPEED, *Of Counsel.*

EXHIBIT "A."

Statement.

Folio 339, Oh. PHILADELPHIA, *July* 21, 1882.

Craft & Co., Indianapolis, to Simons & Co., manufacturing jewelers, 611 & 613 Sansom street.

Terms—net cash, 30 days.

Sept. 25, '78.	To merchandise,		78 41
Oct. 1,	"	"	40 05
Dec. 6,	"	"	218 16
Jan. 20, '79		"	63
			$399 62

The R. Wallace & Sons Manufacturing Company, a corporation organized and existing under the laws of the State of Connecticut, & a citizen of said State, represents to the court that between the 21 of September, 1878, & March 25, 1879, both inclusive, the firm of R. Wallace & Sons sold the defendant Craft goods and
111 merchandise to the amount and value of 370.46, and has received payments thereon amounting to $153, leaving due and unpaid the sum of $217.46, with interest thereon averaging June 1st, 1879, a bill of particulars of which is filed herewith, marked Exhibit "A." That this nar-ator now owns and holds for value such debt, which is long past due and unpaid.

Wherefore the nar-ator prays leave to file this its intervening petition in the above-entitled cause, and to share in the trust fund arising in this cause to the creditors of said Craft, and for all other and proper relief.

R. WALLACE MANUFACTURING COMPANY,
By HORACE SPEED,
Its Solicitor.

HORACE SPEED, *Of Counsel.*

EXHIBIT "A."

WALLINGFORD, CONN., *July* 14, 1882.

Mr. W. H. Craft, Indianapolis, Ind., to R. Wallace & Sons M'f'g Co., electroplate on cast steel and nickel, sterling silverware:

1878.				
Sep. 21.	To mdse.		54 24	
Oct. 24.	"		74 71	
Dec. 3.	"		126 42	
"	"		49 17	
1879.				
M'r. 25.	"		65 92	
				370 46

112 CR.

1879.				
Jan. 10.	Cash		128	
Mar. 15.	"		25	
				153
				217 46

And come now also Sinnock and Sherrill, by William & Lew Wallace, their solicitors, and file their intervening petition herein in the words following, to wit:

Your petitioners, William P. Sinnock and Horace D. Shirrill, trading together as partners under the firm name and style of Sinnock and Shirrell, and citizens of the State of New York, respectfully present this as their intervening petition in the above-entitled cause, offering hereby to constitute and bear their equal share of the expense of such proceedings; and your petitioners show to your

honors that the said defendant, William H. Craft, was heretofore, to wit, on the — day of ——, 1881, indebted to your petitioners on various accounts and notes in the sum of five hundred and twenty-eight $\frac{41}{100}$ dollars, to wit: On one note, dated and made October 12, 1878, for $85.89 and interest from maturity, and on another note, dated and made February 15, 1879, for $263.50, and on an account for $109.34, dated February 28, 1879; and on said day your petitioners instituted suit in the superior court of Marion county, in the
113 State of Indiana, wherein said Craft then had his usual place of residence, upon such accounts and notes, and summons being issued in said cause and served in due form of law, such proceedings were had therein that by the consideration of said court your petitioners secured judgment against said defendant in sums amounting to five hundred and twenty-eight dollars and 41 cents, with six per cent. interest thereon from said date, and costs of said action, taxed — at dollars; that execution was issued on said judgment to the sheriff of Marion county, Indiana, and no goods of said Craft were found upon which to levy the same, and the same was returned unsatisfied.

Wherefore your petitioners pray to be admitted to share in the sums realized from the assets and effects of said defendant and to be protected in all things by the decree entered and considered in this cause, and they will, &c.

WILLIAM & LEW WALLACE,
Solicitors for Petitioners.

114 And afterwards, to wit, at the May term of said court, on the 16th day of August, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come the R. Wallace & Sons Manufacturing Company, a corporation; William Sinnock and Horace D. Sherrell, partners as Sinnock and Sherrell; and George W. Simons, John F. Simons, George W. Simons, Jr., Frederick M. Simons, and Peter B. Simonds, partners as Simons Bros. & Co.; S. Stanley and B. Stanley, partners as Stanley Bros.; Simpson, Hall, Miller & Co., a corporation, by their solicitors, and represent that they are creditors of the said Craft, and ask leave to intervene herein and prove the amounts of their respective claims; also come the respondents, by their solicitors, and object to leave being granted said creditors on the ground that the bill herein is for the benefit of the complainants only; which objection is overruled, and said creditors are allowed to file their intervening petitions and become parties to the suit, with the right to prove the amount due them, respectively, and said creditors now file their intervening petitions as follows:

Intervening Petition of Stanley Bros.

115 Stephen Stanley and Benjamin Stanley, copartners under the style of Stanley Brothers, represent to the court that said Craft bought of them goods & merchandise on credit prior to April 5th, 1879, amounting to $91.93 (a bill of particulars of which is filed

herewith as part hereof, marked Exhibit "A"); that the same is past due and wholly unpaid, and that interest is due thereon from July 1st, 1879; that said Craft is wholly insolvent, and the nar-ators now pray to be made parties to this suit upon proper terms and allowed to share in the fund arising in this cause, and for all proper relief.

STEPHEN STANLEY,
BENJAMIN STANLEY,
By HORACE SPEED,
Their Attorney.

HORACE SPEED, *Of Counsel.*

EXHIBIT "A."

S. Stanley. B. Stanley.

ATTLEBOROUGH FALLS, MASS., *March 15th*, 1879.

Mess. Harry Craft.

Bought of Stanley Brothers, manufacturers of gold stock plated chain.

$\frac{1}{6}$ dozen	No. 189 vest chains, @ $60		10	
" "	213 " " " 48		8	
" "	135 " " " 42		7	
" "	136 " " " 39		6	50
" "	256 " " " 48		8	
" "	124 " " " 45		7	50
$\frac{1}{6}$ dozen	No. 280 vest chains, @ $42		7	
116 $\frac{1}{6}$ dozen	No. 18 vest chains, " 30		5	
" "	4 double curb chain & warp chain, @ $33		5	50
$\frac{1}{6}$ dozen	No. 5 double curb chain & twist chain, @ $40		6	67
$\frac{1}{12}$ "	1 " " guard chain, @ $84		7	
" "	2 " " " " " " 96		8	
$\frac{1}{6}$ "	2 " " gold tip " " 30		5	
" "	3 " " " " " " 33		5	50
" "	4 " " " " " " 36		6	
" "	5 " " " " " " 42		7	
" "	6 " " " " " " 48		8	
" "	4 single " " " " " " 27		4	50
" "	5 " " " " " " 33		5	50
			127	67
	20% off		25	53
			102	14
	10% off		10	21
	Net		$91	93

Intervening Petition of Simpson, Hall, Miller & Co.

Simpson, Hall, Miller & Co., a corporation organized and existing under the laws of *of* the State of Connecticut, represents to the court

that said Craft bought of them goods and merchandise on credit, prior to April 5, 1879, amounting to $414.22 (a bill of particulars of which is filed herewith, marked Exhibit "A"); that the same is past due and wholly unpaid, and that interest is due thereon from July 1, 1879; that said Craft is wholly insolvent.

117 And this nar-ator now prays to be made a party to the suit upon proper terms, and allowed to share in the fund arising in this cause, and for all proper relief.

SIMPSON, HALL, MILLER & CO.,
By HORACE SPEED, *Their Attorney.*

HORACE SPEED, *Of Counsel.*

EXHIBIT "A."

WALLINGFORD, CON., *Dec. 17th*, 1878.

Mr. Henry Craft, Indianapolis, Ind.

Bought of Simpson, Hall, Miller & Co., manufacturers of fine electro-plated ware. Salesroom 36 East 14th St., New York.

— bbls.
1 box*es.*
— packages.

All claims for errors — damages must be made within five days after receipt of goods.

Terms: 4 months. Terms: 6 per cent. discount if paid in 10 days; 5 per cent. discount if paid within 30 days.

All communications should be addressed to Wallingford, Con.

(All accounts subject to sight draft if not paid at maturity.)

Shipped by ex.

1	333	Set pl. lst. less 5 tea	34 50		
1	"	S. H. "	4 75		
1	"	Urn "	18 00		
1	2084	Set " less 5 tea	30 00		
1	"	Urn "	22 25		
1	1899	Set bud. lst. less 5 tea	50 00		
1	"	S. H. " "	7 00		
1	"	Urn "	35 00		
1	"	Butter bud.	8 50		
1	"	Syrup "	8 00		
	2	133 Pickles, 4.00	8 00		
118	1	134 Pickles	8 50		
	2	79 Butters chrs. sat., 11.00	22 00		
			256 50		
		40%	102 60		
				153 90	
½ gro.		ruby teaspoons, 18.00	9 00		
		⅓%	3 00		
				6 00	
					$159 90

February 12, 1879:

1	1895	Caster, No. 50 bot.	12 50		
1	"	" belt	11 50		
1	1892	"	10 50		
1	125	" chrs. belt	7 00		
1	128	" " sat.	6 00		
1	156	"	7 50		
6	100	Pickles, 1.50	9 00		
1	125	"	2 00		
1	"	" chrs.	2 25		
1	400	Berry	5 00		
1	1150	"	10 00		
1	3	Biscuit jar	16 00		
1	1492	Basket chrs.	5 50		
1	1446	" " sat.	16 00		
1	224	Card " " lst.	9 00		
1	96	Cups " scale " 3.50	7 00		
		Am't forward	136 75	----	159 90
		Amount forward	136 75	----	159 90
1	66	Cup chrs. lst.	3 00		
1	128	Pickles	3 00		
			142 75		
		40%	57 10		
				85 65	
119		6 doz. silver teaspoons, 4.75	28 50		
		3 " fiddle " 4.25	12 75		
2	doz.	fiddle tablespoons, 8.50	17 00		
2	"	" med. forks, "	17 00		
4	"	silver " 9.50	38 00		
			113 25		
		40 & 5%	48 70		
				64 55	
¼	doz.	2200 bells, 18.50	4 63		
¼	"	2100 " 20	5 00		
⅙	"	1400 " 17	2 83		
⅙	"	1500 " 15	2 50		
⅙	"	3300 " 12	2 00		
			16 96		
		25%	4 24		
				12 72	
					162 92

March 27, 1879:

12	100	Pickles, 1.50	18 00	
6	200	" 3.50	21 00	—this time only.

2	53	Butters chrs.,	1 with bail,	4.50	9 00		
2	"	"	1 "	4.	8 00		
2	110	Casters "	4.75		9 50		
2	"	"	4.25		8 50		
2	108	"	4.25		8 50		
2	"	"	3.75		7 50		
1	1492	Basket "	5.50		5 50		
1	"	"			5 00		
1	1484	" "			8 00		
1	2060	Tea set "	lst. less 5 tea		40 00		
1	212	Glass for berry			2 00		
					149 00		
			40%		59 60		
						89 40	
							91 40
							$414 22

120 STATE OF CONNECTICUT, } ss:
New Haven County, }

Personally appeared before me this day Charles D. Gale, treasurer of Simpson, Hall, Miller & Co., of Wallingford, State and county aforesaid, and made oath that the within & foregoing account of four hundred and fourteen $\frac{22}{100}$ dollars is justly due and owing said Simpson, Hall, Miller & Co. from Wm. H. Craft, of Indianapolis, Indiana; that no part has been paid or secured to be paid and no note given, and that he is authorized to make this proof.

CHARLES D. GALE.

Subscribed and sworn to before me, at Wallingford, Conn., this 9th day of August, 1882.

[SEAL.] CLARENCE H. BROWN,
Notary Public.

(For the intervening petitions of Sinnock & Sherrill, Simons Bros. & Co., and th- R. Wallace Manufacturing Company see page 57, &c.)

121 And afterwards, to wit, at the May term of said court, on the 16th day of August, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

This cause came on to be heard upon the complainants' exceptions to the master's report and was argued by counsel, and thereupon, upon consideration thereof and upon the evidence in said cause, the court finds—

That said exceptions are well taken and are sustained, and that the equity of said cause is with the complainants, and that there is due the complainants, William Smith, John Smith, and Otto C. Linz, partners, $2,060.58, two thousand and sixty and $\frac{58}{100}$ dollars, with interest thereon at six per cent. per annum from September 18, 1879, and to Max Freund and Adolph —, partners, eight hundred and

thirteen — and nine cents, with interest thereon from September 18, 1879, and to Lewis and Moses Kahn, partners, two thousand one hundred and twenty-two dollars and twenty-six cents, with interest thereon, and to David Untermeier one thousand five hundred and eighty-five dollars, with interest thereon from June 9th, 1881,
122 and the Middletown Plate Company seven hundred and sixty dollars, with interest thereon from June 9th, 1881.

That the plaintiffs are entitled to a decree for the amounts so found due them respectively and to a priority of payment; that the sale from the respondent Craft to his co-respondents, Fletcher & Churchman, was fraudulent and void, and that the goods so transferred exceeds in value the aggregate amounts of the debts herein found to be due the complainants.

And it is ordered by the court that the remaining matters in issue herein between the intervening petitioners, who have been made parties plaintiff, be referred to the master, who will take testimony and report to the court with all proper speed the amount due each said intervening petitioner-, now complainant, and other creditors who may file their claims and become parties hereto within thirty days from this date.

And it is now agreed between the respondents and all creditors who have been allowed to intervene herein, and is so found by the court for the purposes of distribution, that the cash value of the goods transferred by Craft to Fletcher & Churchman was the sum of $20,000.00, and that the amount due to Fletcher and Churchman from Craft was the two notes for $12,000.00 each, and the
123 amount paid on the McGinnis note, $8,085.35, with six per cent. interest from February 17, 1879.

But the above reference to the master and the proceedings thereunder are not to affect or prejudice the rights of complainants to the original bill herein, the bill remaining as to them a bill on behalf of themselves only.

And afterwards, to wit, at the May term of said court, on the 24th day of August, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Henry P. Reed *et al.*, by McDonald & Butler, their solicitors, and file their intervening petition herein in the words following, to wit:

Your petitioners, Henry G. Reed, Henry H. Fish, and George Brabrook, of Taunton, and citizens of the State of Massachusetts, respectfully show to your honors that they are partners doing business under the firm name and style of Reed and Barton, and that they were doing business under that name and style during the years 1878 and 1879; and they further show that William H. Craft, a citizen of Indianapolis and State of Indiana, is indebted to them in the sum of six hundred sixty-nine and $\frac{91}{100}$ — ($669.91)
124 for goods, wares, and merchandise heretofore sold and delivered by them to said Craft, at his special instance and request, as shown by a verified bill of particulars filed herewith and

made part hereof and marked Exhibit "A;" that said sum of money was long since due and is still due and wholly unpaid, though said Craft has often been requested to pay the same; that said indebtedness was contracted prior to the 5th day of April, 1879, and bears interest at the rate of six per cent. per annum, as stated in said bill of particulars.

Your petitioner- further show to the court that said William H. Craft is wholly insolvent and was so at the time he contracted said indebtedness and has remained so ever since.

Wherefore your petitioners now pray the court to be made parties to said suit of William Smith *et al. vs.* William H. Craft upon such terms as to the court may seem just, and to be allowed to share in the funds arising from said suit, and that they recover of said Craft said sum of $669.91, with interest and costs, and for all other proper relief.

REED AND BARTON,
By MASTER & BOICE,
Their Solicitors.

125 EXHIBIT "A."

TAUNTON, MASS., *Aug.* 18, '82.

W. H. Craft, Indianapolis, Ind., to Reed & Barton, Dr.

1878.					
Apr.	9.	Error in settlement			42 88
	29.	1 pla. c'st'rs,	3790–6–97	21 50	
		1 " "	3875–6–134	13 75	
		1 " "	3915–6–134	12 00	
		1 " "	3905–6–77	9 25	
		1 " "	3699–6– "	9 75	
		1 " "	3645–6–97	16 00	
		1 " "	3585–6–77	10 75	
		1 " "	" 5–86	10 00	
		1 " "	3470–6–93	10 00	
		1 " "	3244–6–77	7 50	
		1 " "	3022–5–86	9 50	
		1 " pickles,	1110–1–055	5 00	
		1 " "	1100–1–55	3 50	
		1 " ice-pitcher,	1281	18 00	
		1 " filter,	lst.	18 00	
		2 " goblets,	01281– " 4.50	9 00	
		2 "	1612 " 5.00	10 00	
		1 " bowl,	" "	9 50	
		1 " ice pitcher "		24 00	
		1 " waiter,	4112–16	21 00	
		1 " basket,	3545	10 00	
		1 " "	3525	7 50	
		1 " "	3515	5 50	
		1 " "	3235	11 00	
		1 " "	3055	7 00	
		1 " toilet,	455	18 00	

126

1878.

Apr.	29.	1	pla. butter dish, 425	10 50		
		1	" " " 765	9 00		
		1	" card stand, 2090	7 50		
		1	" " " 2080	6 50		
		1	" " " 2070	6 50		
		1	" " " 02145	8 50		
		1	" " " 02135	8 00		
		1	" " " 2125	7 00		
		1	" sugar, 2789	9 00		
		1	" cream, " lst	9 50		
		1	" " 1180 "	9 00		
		1	" sugar, " "	10 00		
		2	" cups, 850 " 3.25	6 50		
		2	" " 830 " 3.00	6 00		
		1	" " 750 "	3 25		
		1	" " 530 "	3 00		
		1	" " 68 "	3 00		
		1	" " 64 "	2 75		
		1	" " 879 "	3 75		
		1	" " 889, all gold	5 00		
		½	doz. nap. rings, 966, 9.00	4 50		
		½	" " " 920, 8.00	4 00		
		½	" " " 906, 9.00	4 50		
			Am'ts for'd	453 75	42 88	
1878.			Am'ts bro't for'd	453 75	42 88	
		½	doz. nap. rings, 886, 9.00	4 50		
		1½	" " " 730, 5.00	2 50		
		½	" " " 286, 7.50	3 75		
				464 50		
			40.10	213 67		
					250 83	
Apr.	29.	4	doz. pearl table-spoons, 4, 9.50	38 00		
		9	" " tea " 2, 4.75	42 75		
		9	" flor. " " 2, "	42 75		
127		4	doz. pearl mid. forks, 4, 9.50	38 00		
		6	" gem " " " "	57 00		
		1/12	" ladles "	00		
				218 50		
			40	87 40		
					131 10	
Dec.	5.	2	doz. tr'p'd table-spoons, 4, 8.50	17 00		
		6	" flor. " " " 9.50	57 00		
		9	" " tea " 2 4.75	42 75		
		6	" tr'p'd " " " 4.25	25 50		
		2	" mid. forks, 4, 8.50	17 00		

1878.					
Dec. 5.	1	doz. flor. butter-knives, 3		9 00	
	1	" gem " " A		10 50	
	1/6	" " pie " 4, 42.00		7 00	
	1/6	" flor. " " " "		7 00	
	1	" gem sugar-spades, 3		8 00	
	1/12	" " mid. ladles, 4, 48.00		4 00	
	1/12	" " oyster " " 39.00		3 25	
	1/12	" flor. " " " "		3 25	
	1/12	" " mid. " " 48.00		4 00	
				215 25	
			40	86 10	
					129 15
" 14.	4	doz. flor. mid. forks, 4, 9.50		38 00	
			40	15 20	
					22 80
1879.					
Jan'y 24.	1	pla. caster, 3915–6–134		12 00	
	1	" bake-dish, 285		16 00	
	1	" basket, 3693		9 00	
	2	" " 3515, 5.50		11 00	
	2	" " 3510, 5.00		10 00	
	1	" vase, 1830		10 00	
	1	" jewel, 285		12 00	
	1	" pickle, 1100–1–55		3 50	
	1	" card-stand, 2125		7 00	
128	2	pla. teas, 150, 4.50		9 00	
	1	" sugar, 2669		9 00	
	1	" cream, " lst.		9 50	
	1	" slop, " "		10 50	
	1	" spoon cup, " "		8 50	
		Amt's forward		137 00	576 76
1879.		Bro't forward		137 00	576 76
	2	pla. butter-dishes, 912, 5.00		10 00	
	1	" waiter, 2684–10		9 00	
	2	" cups, 1087, lst., 3.25		6 50	
	2	" " 1082 " 3.00		6 00	
	1	" " 830 "		3 00	
	1	" " 770 "		3 50	
				175 00	
			40	70 00	
					105 00
Jan'y 24.	4	doz. gem table-spoons, 4, 9.50		38 00	
	6	" " tea " 2, 4.75		28 50	
	4	" " mid. forks, 4, 9.50		38 00	

1879.				
Jan'y 24.	½ doz. gem sugar shells, 3, 8.00		4 00	
	½ " " butter-knives, 3 R., 10.50		5 25	
			113 75	
		40	45 50	
				68 25

Cr.

Jan'y 6.	By proceeds of draft	750 01	
		200 00	
	Average due Jan'y 1, '79	550 01	
	Interest to date, @ 6 %	119 90	
			$669 90

I, Henry G. Reed, a member of the firm of Reed and Barton, hereby certify that the above statement is a just and true account of the claim of said firm against the above-named W. H. Craft.

HENRY G. REED.

Aug. 19th, 1882.

Bristol, *ss:*

Then personally the above Henry G. Reed — and made oath that the above statement by him subscribed is true, before me—

[seal.] HENRY J. FULLER,
Notary Public.

129 And afterwards, to wit, at the May term of said court, on the 31st day of August, A. D. 1882, in recess thereof, the following further proceedings in the above entitled cause were had, to wit:

Come now M. Hamniel & Company, Adolph Goldsmith, Joseph Fahey, and the Meriden Cutlery Company, by J. E. Florea, Esq., their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

Leon Hamniel and Jacob W. Riglander, copartners doing business under the firm name and style of L. Hamniel & Co., and citizens and residents of the State of New York, represent to the court and say that William H. Craft is indebted to them seventeen and $\frac{75}{100}$ dollars for goods and merchandise sold and delivered by these nar-ators to him, at his special instance and request; a bill of particulars, verified, is filed herewith and marked Exhibit "A;" that said William H. Craft is now insolvent, and that said claim is just, lawful, and due and wholly unpaid, together with the interest from 18th day of March, 1879.

130 And said nar-ators now pray this court for permission to file this their intervening petition in this cause and share in the funds held or which may be held by this court—the proceeds of the property of said William H. Craft—as the court may direct.

L. HAMNIEL & CO,
By JOSEPH E. FLOREA,
Their Solicitor.

JOS. E. FLOREA, *Of Counsel.*

All claims for deficiency to be made immediately on receipt of goods.

NEW YORK, —— —, 188–.

Mr. H. Craft, Indianapolis.

Bought of L. Hamniel & Co., importers of watch materials, tools, and optical goods, 9 Maiden Lane.

Sole importers of the Star spectacles and manufacturers of the Eureka spectacle case, watch-guards, ribbons, and watch-glasses.

Terms cash.
P. O. box 1063.

1879.

Mar. 18.	1	doz.	No.	403	silk	guard	1 50
	1	"	"	2469	"	"	1 75
	1	"	"	1490	"	"	2 50
	1	"	"	1493	"	"	1 50
	1	"	"	900	"	"	2 00
	1	"	"	401	"	"	1 25
	1	"	"	1476			1 00
	1	"	"	1487			2 50
	1	"	"	3013			3 75
							$17 75

Office of D. L. Safford, mercantile and collection agency, 214 & 216 Broadway, New York city, N. Y., and 5 Custom-House St., Providence, R. I.

131 STATE OF NEW YORK, }
City & County of New York, } *ss:*

Leo Hamniel, being duly sworn, doth depose and say that he is a member of the firm of R. Hamniel & Co., composed of deponent and Jacob W. Riglander; that the annexed statement of the account of said firm against Henry Craft, now or lately doing business at Indianapolis, in the State of Indiana, is just, true, and correct, and that there is now due said firm thereon the sum of seventeen $\frac{75}{100}$ dollars, with interest thereon from the 18th day of May, 1879; that no part thereof has been paid or satisfied, and that there are no set-offs or counter-claims thereto to the knowledge or belief of deponent, and said firm hold no note, collateral, or other security for said amount.

JACOB HAMNIEL.

Sworn to before me this 28th day of August, 1882.

WM. J. NICHOLSON,
Notary Public, New York County.

Intervening Petition of Adolph Goldsmith.

This nar-ator, Adolph Goldsmith, a citizen and resident of
132 the State of New York, represents to the court that heretofore, to wit, November 23d, 1878, said William H. Craft executed and delivered his two certain promissory notes to the firm of Goldsmith & Schlusser, which notes are in the words and figures following, to wit:

$183.57. INDIANAPOLIS, *Nov.* 23, 1878.

Five months after date I promise to pay to the order of Goldsmith and Schlusser one hundred and eighty three and $\frac{57}{100}$ dollars at Fletcher's Bank, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid.

(Signed) W. H. CRAFT.

2nd note.

$183.57. INDIANAPOLIS, *Nov.* 23, 1878.

Six months after date I promise — to the order of Goldsmith & Schlusser one hundred and eighty-three and $\frac{57}{100}$ dollars at Fletcher's Bank, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid.

(Signed) W. H. CRAFT.

That said Goldsmith & Schlusser assigned, transferred, and endorsed said notes, in writing, over to this nar-ator for value; that said Craft is indebted thereon to the complainant three hun-
133 dred and sixty-seven and $\frac{14}{100}$ dollars, with ten per cent. interest thereon from April 23d and May 23, respectively, 1879; also an account of twenty-three and $\frac{38}{100}$ dollars, balance due on a note that was sent to W. H. Craft, with the promise if so done said twenty-three and $\frac{38}{100}$ dollars would be paid, which promise was not *done;* that the note was sent and no part of the balance was ever paid therefor, which is due and unpaid, with interest.

All of which is just, lawful, due, and remains wholly unpaid; and said nar-ator now prays the court for permission to file this *their* intervening petition in this cause, and to share in any funds held or which may be held by this court, the proceeds of the property of said William H. Craft, transferred to other defendants int his cause, as stated in the bill of complaint.

ADOLPH GOLDSMITH,
JOSH. E. FLOREA,
His Solicitor.

JOSH. E. FLOREA, *Counsel.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Adolph Goldsmith, being duly sworn, says that the annexed account against W. H. Craft is correctly copied from the books
134 of the original entry of *of* deponent, and that the notes hereto annexed were given on account of said indebtedness.

That the charges were made in said books at or about the time of their respective dates; that the goods for which said charges were made were sold and delivered as charged; that the charges are correct, and the account just and true as stated; that there is now due and owing thereon from the said W. H Craft to the said deponent the *the* sum of three hundred and ninety $\frac{52}{100}$ dollars and interest thereon from various dates, amounting to the sum of one hundred and twenty-eight $\frac{75}{100}$ dollars.

That no part of said sum has been paid or in any manner settled; that there are no deductions, off-sets, or counter-claims except such as are specified in said annexed account, and deponent does not hold any security for said debt or any part thereof, except the notes annexed thereto.

ADOLPH GOLDSMITH.

Sworn to before me this 28th day of August, 1882.
[SEAL.] GEO. C. DE LACY,
Notary Public, N. Y. City & Co.

135 *Statement.*

NEW YORK, *June* 17, 1881.

Mr. W. H. Craft, Indianapolis, Ind., to Adolph Goldsmith, dr., suc'r to Goldsmith & Schlusser, suc'rs to James Schlusser, No. 3 Maiden Lane. Terms, —.

To mdse.:

To note ret'r'd	183 57	
" "	183 57	
" "	183 57	
		$550 71
Paid on ac., and note returned to Craft with promise to remit the bal., $23.38, which was not done		160 19
		$390 52

136 *Intervening Petition of Joseph Fahys.*

Joseph Fahys, a citizen and resident of the State of New York, represents to the court that William H. Craft is indebted to him one hundred and sixty-eight and $\frac{95}{100}$ dollars, with interest thereon from the 20th day of April, 1879, all of which is for goods, wares, and merchandise sold and delivered by this relator to said Craft at his instance and request, a bill of particulars of which is filed herewith and made a part, marked "A," all of which is due and wholly unpaid.

That said bill was contracted prior to the 5th of April, 1879, and that said Craft is now insolvent, and said relator now prays the court for permission to file this his intervening petition in this cause and share in the funds which may be held by the court, the proceeds of the sale of said Craft's property, and for other and equitable relief.

JOSEPH FAHYS,
By JOSH. E. FLOREA, *Solicitor.*

JOSH. E. FLOREA, *Counsel.*

137 EXHIBIT "A."

Monthly Statement.

Average.

NEW YORK, *April 28th*, 1879.

Mr. Henry Craft to Joseph Fahys, dr., 38 Maiden Lane.

Chicago office, 78 Monroe St.
Terms, cash.

1878.				
Oct. 28.	To mdse., net, 4 mos.			36 60
1879.				
Feb. 5.	"	"	"	84 85
" 7.	"	"	30 d'ys	31 00
" 7.	"	"	4 mos.	16 50
				$168 95

NEW YORK, *October* 28, 1878.

Mr. Henry Craft.

Bought of Joseph Fahys, manufacturer of watch-cases and dealer in American movements.

General office, 38 Maiden Lane, New York; Chicago office, 78 Monroe St.; factories, Sag Harbor, New York; Carlstadt, N. J.

Terms, cash; 5%, 30 days; of 6%, 10 days; 4 mos., net.
In case of a reduction in price of silver cases an allowance will be made on the amount purchased within thirty days previous to such reduction.

1 2 3	A. C. case			3 90
1 2 "	Sf. "	"		4 40
1 4 "	"	"		7 25
1 5 "	G. F.	"		9 70
1 6 "	"	"		11 35
				36 60

Duplicate.

NEW YORK, *February 5th*, 1879.

2 2 3	S. J. cases, 4.40			8 80
1 3 "	A. C. "			4 90
1 3 "	G. T. G. C. cases			7 20
1 4 "	G. S. "			7 60
1 4 "	S. S. "			7 25
2 4 "	G. I. " 8.20			16 40
	1 4 3 G. I. S. W. cases			9 35
138	1 5 " G. F.			9 10
	1136556, P. S. B. S. W.		19 00	
	25%		4 75	
				14 25
				$84 85

Duplicate.

NEW YORK, *February* 7, 1879.

30 d'ys net.

$\frac{60}{40}$ 1 18 kt., Elgin S. W.
$24\frac{3}{8}$ 1950, 950 m'k'g 2.00 eng. 31 00

Duplicate.

NEW YORK, *February 7th*, 1879.

4 mos. net.

1 No. 64, Elgin mov't 16 50

Duplicate.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

Joseph Fahys, being duly sworn, doth depose and say that he is a creditor of Henry Craft, of Indianapolis, Ind.; that the annexed statement of the account of deponent against said Henry Craft, now or lately doing business at Indianapolis, in the State of Indiana, is just, true, and correct, and that there is now due him by said Craft the sum of one hundred and sixty-eight $\frac{95}{100}$ dollars, with interest thereon from the 20 day of April, 1879; that no part thereof has been paid or satisfied, and that there are no set-offs or counter-claims thereto to the knowledge or belief of deponent, and
139 deponent holds no notes, collateral, or other security for said amount.

JOSEPH FAHYS.

Sworn to before me this 24 day of August, 1882.
[SEAL.] WM. J. NICHOLSON,
Notary Public, New York County.

Intervening Petition of the Meriden Cutlery Company.

The Meriden Cutlery Co., a corporation duly organized and existing in and under the laws of the State of Connecticut, respectfully

represents to the court that William H. Craft is indebted to it eighty-three and $\frac{80}{100}$ dollars and interest thereon from April 28th, 1879, as is shown by verified bill of particulars filed herewith and hereof made a part, marked Exhibit "A," all of which remains due and wholly unpaid; and your nar-ators say that said Craft is insolvent, and that it now prays the court for permission to file this intervening petition in this cause and share in the funds held or which may be held by this court, the proceeds of the property of said William H. Craft, as the court in its judgment may direct.

MERIDEN CUTLERY CO.,
JOSH. E. FLOREA, *Solicitor.*

JOSH. E. FLOREA, *of Counsel.*

140 Ex. "A."

MERIDEN, CONN., *Feb.* 28, 1879.

Harry Craft, Indianapolis, Ind.

Bought of Meriden Cutlery Co., manufacturers of superior table cutlery. New York salesroom, 49 Chambers St.

Terms cash in New York funds, with liberty to draw accordingly. Limit of credit, 60 days.

Address all communications to Meriden, Con.

25 doz. med. knives, 07740, 1.90	47 50
6 " del. tab'sp., 2.00	12 00
6 " " " forks, 2.00	12 00
12 " " teasp., 1.00	12 00
Case	30
Duplicate invoice.	83 80

STATE OF CONNECTICUT, } *ss:*
New Haven County, }

Before me, a notary public of said county, personally appeared Homer H. Curtiss, secretary of Meriden Cutlery Company, who deposes and says that the above account is just and true to the best of his knowledge and belief.

HOMER H. CURTISS, *Secretary.*

Sworn to and subscribed this twenty-ninth day of August, A. D. 1882.

[SEAL.] THOMAS A. BENHAM, JR.,
Notary Public.

141 And afterwards, to wit, at the May term of said court, on the 1st day of September, A. D. 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now C. G. Alford & Company, Stern Brothers & Company, Lessaner and Sondheim, Noah Mitchell, Pforzheimer and Keller, D. S. Spaulding, Albert Lorsch, and John W. Steel, by Horace Speed,

Esq., their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

Charles G. Alford and Frederick G. Thornburg, copartners under the firm name of C. G. Alford & Co., show to the court that said Craft on March 15, 1882, executed to them, for goods theretofore sold him, two promissory notes for $141.00 and $141.43, at 30 and 60 days, respectively, with 10% interest after maturity, and attorneys' fees, and that on the 18th of March, 1879, he bought of them goods on a credit of four months to the value of $190.47. Copies of said notes and a bill of particulars of such purchase are filed herewith as parts hereof and marked, respectively, "A," " B," & " C."

142 That said sums are due and wholly unpaid.

And the nar-ators pray that they may be permitted to join in the above-entitled cause as plaintiffs and share in the fund arising herein, and for all further proper relief.

CHARLES G. ALFORD,
FREDERICK G. THORNBURG,
By HORACE SPEED,
Their Solicitor.

HORACE SPEED, *Of Counsel.*

Exhibits.

EXHIBIT "A."

$141.00. INDIANAPOLIS, *March* 15, 1879.

Thirty days after date I promise to pay to the order of C. G. Alford & Co. one hundred and forty-one dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid, and attorneys' fees.

(S'g'd) W. H. CRAFT.

EXHIBIT B.

$141.43. INDIANAPOLIS, *M'ch* 15, 1879.

Sixty days after date I promise to pay to the order of C. G. Alford & Co. one hundred and forty-one & $\frac{43}{100}$ dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid, and attorneys' fees.

(S'g'd) W. H. CRAFT.

143 *Monthly Statement.*

NEW YORK, *Aug.* 24*th*, 1882.

Mr. W. H. Craft to C. G. Alford & Co., 200 Broadway, Dr.

Terms, net cash.

1879.		
Mar. 18th.	To mdse., as per bill rendered, 4 months, net, due July, 18, 1879	190 47
	To unpaid note, due April 14–17, 1879	141 00
	" " " " May 14–17, 1879	141 43
		472 90

We make interest as follows:

3 years 1 month on	open ac., $190.47, at 6%	35 23
3 " 3 "	note, 141.43, at 10%	45 95
3 " 4 "	" 141.00 "	46 67
		127 85

Please note that notes are drawn with 10% interest from making until paid, and attorneys' fees.

Book 20; folio 600; salesman, Moore.

NEW YORK, *March 18th*, 1879.

Mr. W. H. Craft.

Bought of C. G. Alford & Co., diamonds & manufacturing jewelers, 200 Broadway.

Established 1868. Terms, 4 months net cash.

		42 48 54	
	$\frac{1}{6}$ doz. each	R. P. vest chains, No. 118–119–120*s*	24 00
		90 63 48 45	
	$\frac{1}{6}$ " " " "	No. 123–17–123–122	41 00
		54 48 36	
	$\frac{1}{6}$ " " " "	No. 52–51–50	23
		54 57 60 66	
	$\frac{1}{12}$ " " " "	No. 1051–924–979–603	19 75
		45 54 48 63	
	$\frac{1}{12}$ " " " "	1052–48–55–27	17 50
		60 48 57 42	
	$\frac{1}{12}$ " " " "	282–46–45–329	17 25
		66 60	
	$\frac{1}{12}$ doz. each	R. P. neck-chains, 555 *p*–4176	10 50
144		650 400	
	2 each	R. Roman neck-chains, 93 – 21	21 00
		450 400 600	
	1 each	R. Roman neck-chains, 28 – 23 –380	14 50
			188 50
	Less 15%		28 28
			160 22
		250 2	
	$\frac{1}{2}$ doz. each	plated collar-buttons, 730–268	2 25
	$\frac{1}{4}$ " "	enamel-d sleev- buttons, 950	1 88
		1050 9	
	$\frac{1}{4}$ " "	plated agate, 541 –540	4 87
		1050 9	
	$\frac{1}{6}$ " " " "	337 –341	3 25
		5 6	
	$\frac{1}{4}$ " "	pearl buttons, 205–34	2 75
526	$\frac{1}{4}$ " "	onyx " " " 9	2 25
352	$\frac{1}{6}$ " "	cameo " " 12	2 00

Delivered by Mr. Moore.

1083	1 cameo scarf-pin		5 00
1004	2 " " "		6 00
			190 47

Terms, 4 months net; due July 18, '79.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

Fred'k G. Thornburg, being duly sworn, doth depose and say that he is a member of the firm of Chas. G. Alford & Co., composed of Charles G. Alford and deponent; that the annexed statement of the open account of said firm against W. H. Craft, now or lately doing business at Indianapolis, in the State of Indiana, is just, true, and correct, and there is now due said firm thereon the sum of one hundred and ninety $\frac{47}{100}$ dollars with interest thereon from the 18th day of July, 1879; that no part thereof has been paid or satisfied,
145 and that there are no set-offs or counter-claims thereto to the knowledge or belief of deponent, and said firm hold no note, collateral, or other security for the same amount.

FRED'K G. THORNBURG.

Sworn to before me this 24th day of August, 1882.

[SEAL.] WM. J. NICHOLSON,
Notary Public (16), *New York County.*

Intervening Petition of Sterne Brothers & Company.

Nathan Stern, Leopold Stern, and Isador Stern, copartners under the name of Stern Bros. & Co., show to the court that on Nov. 27th, 1878, said Craft executed to them, under their firm name, two notes for $103 and $104.47, at 5 and 6 months respectively, and on Jan'y 31, 1879, one note for $193.80, at 60 days, all with 10% interest after maturity until paid, & the latter also bearing attorneys' fees; that on Dec. 5, 1878, he also bought of them goods & merchandise, to the value of $13.50, on a credit of — months, a bill of particulars of which sale & copies of said notes are filed herewith as parts hereof, marked Exhibits "A, B, C, & D;" that all said sums are due and wholly unpaid.

And the nar-ators pray they may be permitted to join in the above-entitled cause as plaintiffs & share in the fund arising herein, & for all further proper relief.

146

NATHAN STERN,
LEOPOLD STERN,
ISADOR STERN,
By HORACE SPEED,
Their Sol'r.

HORACE SPEED, *Of Counsel.*

EXHIBIT "B."

$103.00. INDIANAPOLIS, *Nov. 27th*, 1878.

Five months after date I promise to — the order of Stern Bros. & Co. one hundred and three dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid.

W. H. CRAFT.

Due April 30.

EXHIBIT "C."

$104.47. INDIANAPOLIS, *Nov.* 27, 1878.

Six months after date I promise to pay to the order of Stern Bros. & Co. one hundred & four and $\frac{47}{100}$ dollars at Fletcher's B'k, for value received, without any relief whatever from valuation of appraisement laws, with ten per cent. interest from maturity until paid.

W. H. CRAFT.

Due May 30.

EXHIBIT "D."

$193.80. INDIANAPOLIS, *Jan'y 31st*, 1879.

Sixty days after date I promise to pay to the order of Stern Bros. & Co. one hundred and ninety-three and $\frac{80}{100}$ dollars, at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from
147 maturity until paid, and attorneys' fees.

W. H. CRAFT.

Due April 4th.

Statement.

NEW YORK, *Aug't 18th*, 1882.

Mr. Harry Craft, Indianapolis, Ind'a., dr., to Stern Bros. & Co., No. 30 Maiden Lane.

Dec. 5, '78.	To mdse	13 50		
Apr. 7, '79.	" cash	193 80		
" "	" interest	1 53		
" 30,	" B. rec	103		
May 2,	" "	104 47		
				$416 30

Interest.

3 years & 7 mos. on	193.80	41 71	
3 " " "	103.00	22 14	
3 " 6 "	104.47	21 95	
			85 80
			$502 10

STATE OF NEW YORK, *City & County of New York,* } *ss:*

Leopold Stern, being duly sworn, says that he is a member of the firm of Stern Bros. & Co., which firm is composed of Nathan

Stern, Leopold Stern, and Isador Stern; that William H. Craft is indebted to said firm in the sum of five hundred and two dollars and ten cents, with interest thereon from maturity, and attorneys' fees, and that the annexed account and notes show a just and true
148 account of such indebtedness; that the said sum is now justly due to said firm; that no payments have been made on account thereof, and that there are no offsets against the same to the knowledge of this deponent.

LEOPOLD STERN.

Sworn this 24th day of August, 1882, before me.

JACOB BRENNER,
Notary Public, Kings Co.

Cert. filed in N. Y. county.

Intervening Petition of Lissauer & Sondheim.

Max J. Lissauer and Lewis H. Sondheim, copartners under the firm name of Lissauer & Sondheim, show to the court that said Craft, in payment for goods theretofore purchased, executed to them, under said firm name, on the 5th day of Feb'y, 1879, two notes for $100 each, at 60 and 90 days, respectively, with 10% interes- from maturity and attorneys' fees, and on the 13th and 14th of Feb'y, '79, purchased of them goods and merchandise on a credit of four months, to the value of $131.50, a bill of particulars of which sale & copies of the notes are filed herewith as parts hereof, marked, respectively, Exibits "A," "B," and "C."

That said sums are due with interest on the acc. from June
149 14, '79, & wholly unpaid.

And the nar-ators pray that they may be permitted to join as plaintiffs in the above-entitled cause & share in the fund therein, & for all further proper relief.

MAX J. LISSAUER,
LEWIS H. SONDHEIM,
By HORACE SPEED,
Their Sol'r.

HORACE SPEED, *Of Counsel.*

EXHIBIT "B."

$100.00. INDIANAPOLIS, *Feb.* 15, 1879.

Sixty days after date I promise to pay to the order of Lissauer & Sondheim one hundred dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity, & attorneys' fees.

(S'g'd) W. H. CRAFT.

EXHIBIT "C."

$100.00. INDIANAPOLIS, *Feb.* 15, 1879.

Ninety days after date I promise to pay to the order of Lissauer & Sondheim one hundred dollars at Fletcher's B'k, for value re-

ceived, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity, and attorneys' fees.
(S'g'd) W. H. CRAFT.

150 Max J. Lissauer. Lewis H. Sondheim.

NEW YORK, *August* 23, 1882.

M-. W. H. Craft, Indianapolis, Ind.

Bought of Lissauer & Sondheim, manufacturing jewelers, 12 Maiden lane.

Terms, 4 mos.

1879.

Feb'y 13.	1 doz. bracelet chains	6 50	
	1 " " " 3½, $2	7 50	
	1 plated neck-chain	6 00	
	1 " " "	6 00	
			26 00
Feb'y 14.	1 ring, 388½	10 00	
	1 cameo ring, 374	7 50	
	1 " " 373	7 50	
	1 " " 331	6 00	
	1 diamond ring, 372	8 00	
	2 amethyst " 378, 3.00	6 00	
	1 " " 374½, 2.00	4 00	
	1 cameo locket, 1090	13 50	
	1 onyx " 112	9 00	
	1 cameo " 405	6 50	
	1 ½ " & amethyst E. r'gs, 590	4 75	
	1 " cameo " 61	3 50	
	1 " onyx " 171	4 50	
	1 " buttons, 377	5 75	
	1 " " 378	5 00	
	1 " " 372	4 00	
			105 50
			$131 50
	Interest at 6 % ac't due on above am't from June 14th, 1879, to date		25 30

151 STATE OF NEW YORK, *County of New York,* } ss:

Alexander Boehme, being duly sworn, doth depose and say that he is the book-keeper of the firm of Lissauer & Sondheim, consisting of Max J. Lissauer & Lewis H. Sondheim, of the city of New York; that the estate of W. H. Craft, of Indianapolis, is indebted to said firm in the sum of $131.50 with interest thereon at 6 % from June 14th, 1879, as specified in the annexed account; that the said sum is now justly due to the said firm; that no payment has been made thereon, and that there are no offsets against the same to the knowledge of this deponent, and the same is not secured by judg-

ment or mortgage upon or expressly charged on the real estate of the debtor or any part thereof, and that no note has been given for the same.

ALEXANDER BOEHME.

Subscribed and sworn to before me this twenty-third day of August, 1882.

BENNO LEWINSON,
Notary Public, 34, *N. Y. Co.*

Intervening Petition of Noah Mitchell.

Noah Mitchell shows to the court that said Craft purchase- of him goods for net cash (which, in the language of the trade, 152 means cash within 30 days) to the value of 121.50, a bill of particulars of which is filed herewith as part hereof, marked Exhibit "A;" that said sum is due, with interest from the dates set out in the bill, & is wholly unpaid.

And the nar-ator prays permission to join as plaintiff in the cause & share in the fund herein, & for all proper relief.

NOAH MITCHELL.
By HORACE SPEED, *His Att'y.*

HORACE SPEED, *Of Counsel.*

Statement.

NEW YORK, *Aug. 18th*, 1882.

Mr. Harry Craft, Indianapolis, Ind., to Noah Mitchell, Dr.,

Terms, net cash. 694 & 606 Broadway, Cor. 4th street.

1878.			
July 17.	To 1 p'r Roman ear-balls, net cash		7 50
	Inter. to date, 5 years 1 month		2 25
	10 – 8		
Sept. 21.	1 p'r, each, ear-ing m't'gs, 78*a*–77	18 00	
	8–9		
	1 " ring " 3–4	17 00	
	2 diamond baby rings, 238, 4.00	8 00	
3 m's.	2 " studs, 1113	14 00	
	1 set hamatite studs, 253	4 00	
	1350–750		
	1 each, cameo ring, 157*a*–169	21 00	
	1 amethyst " 148*a*	7 00	
			89 00
	Inter. from Dec. 21, '78, to date, 4 years, 7 mos., 27 d'ys		24 88
Dec. 24.	1 S. S. ring m't'g, 3 ms.		7 50
	Inter. from Mar. 24, '79, to date, 4 y'rs, 4 mo., 24 d'ys		2 07
" 28.	1 S. S. ring m't'g to order, net cash		7 50
	Inter. from date, —, '78, to date, 4 y'rs, 4 mos., 21 d'ys		2 05
			$142 75

153 DEAR SIRS: We render above statement as per monthly custom for the purpose of showing you the state of your account according to our ledger (irrespective as to whether bills are due or not due), and thus enabling you to compare with your own books. Please check balance shown, and if any error exists advise us.

Will draw on you at three days' sight for — dollars.
Respectfully, NOAH MITCHELL.

STATE OF NEW YORK
City & County of New York, } ss:

Noah Mitchell, being duly sworn, doth depose and say that the within bill is true and correct; that no part of the same has been paid or assigned, and that the am't claimed, to wit, one hundred and forty-two and $\frac{15}{100}$ dollars, is now justly due and unpaid.

NOAH MITCHELL.

Sworn to before me this 20th day of August, 1882.
[SEAL.] HENRY K. THOMAS,
Notary Public, Kgs. Co., N. Y.

Cert. fi-ed in N. Y. county.

Intervening Petition of Pforzheimer & Keller.

154 Isaac Pforzheimer and David Keller, copartners under the firm name of Pforzheimer & Keller, show to the court that said Craft executed to them, for goods theretofore sold, three promissory notes—two dated December 6, 1878, for $128.00 and $128.13, at 5 & 6 months, with ten per cent. interest from maturity, and one dated March 24, 1879, for $215.27, at five months, with 10 % interest from maturity, & attorneys' fees, and on March 24, 1879, bought of them goods on credit of 4 months, to the value of $81.40, a bill of particulars of which sale and copies of said notes are filed herewith as parts hereof, marked Exhibits "A," "B," "C," and "D;" that said sums are past due and wholly unpaid.

And the nar-ators pray permission to join as plaintiffs in the above-entitled cause and share in the fund arising therein, and for all other proper relief.

ISAAC PFORZHEIMER,
DAVID KELLER,
By HORACE SPEED,
Their Attorney.

HORACE SPEED, *Of Counsel.*

Statement.

NEW YORK, *Aug.* 23, 1882.

Mr. W. H. Craft, Indianapolis, Ind., to Pforzheimer & Keller, 24 John street.

Note due May 9, 1879	128	
Int. to date, at 10 %, for 3 year- & 3 mos.	47 60	
		$175 60
Notes due June 9th, 1879	123 13	
Int. at 10 %, 3 yrs. 3 mos	46 56	
		174 69
Note due Aug. 24, 1879	215 27	
Int., 10 %, for 3 years	64 59	
		279 86
Open account due July 24, '79	81 40	
Int., 6 %, 3 years 1 month	15 06	
		96 46
		726 61

155 All claims must be made within ten days after receipt of goods or no allowance will be made.

Isaac Pforzheimer. David Keller.

NEW YORK, *March* 24, 1879.

Mr. W. H. Craft, Indianapolis.

Bought of Pforzheimer & Keller, manufacturers of fine jewelry and dealers in diamonds, American & Swiss watches, No. 24 John street.

Terms: Net cash.

5 plated guard-chains, 8.00		40 00
1 "		5 40
	3.75 3.75 3.75 2.00 3.50	
1 pr. sl. butt's ea.	31½—21½—166—68—167	16 75
	3.50 3.50 2.75 2.50 2.00 2.75 2.25	
1 " " "	4½—167—16½—19—23—30—34	19 25
		81 40

STATE OF NEW YORK, }
County of New York, } *ss:*

David Keller, being duly sworn, says that he is a member of the firm of Pforzheimer & Keller, doing business in the city and county of New York; that the goods & merchandise mentioned and described in the foregoing bill wer- sold and delivered by said firm to W. H. Craft, of Indianapolis, Indiana, at his request, and were reasonably and fairly worth the price of $81.40, which said Craft agreed to pay therefor; that no part thereof has been paid, and the

whole amount thereof, with interest from the 24 of March, 1879, is now due and owing to said Pforzheimer & Keller.

DAVID KILLER.

Sworn to before me this 22d day of August, 1882.

THOMAS H. COOK,
Notary Public, N. Y. Co.

156 $128.00 INDIANAPOLIS, *Dec.* 6, 1878.

Five months after date I promise to pay to the order of Pforzheimer & Keller one hundred twenty-eight dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid.

(S'g'd) W. H. CRAFT.

$128.13. INDIANAPOLIS, *Dec.* 6, 1878.

Six months after date I promise to pay to the order of Pforzheimer & Keller one hundred twenty-eight $\frac{13}{100}$ dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid.

(S'g'd) W. H. CRAFT.

$215.27. INDIANAPOLIS, *M'ch* 21, 1879.

Five months after date I promise to pay to the order of Pforzheimer & Keller two hundred fifteen & $\frac{27}{100}$ dollars for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid, and attorneys' fees.

(S'g'd) W. H. CRAFT.

STATE OF NEW YORK, *County of New York,* } *ss:*

157 David Keller, being duly sworn, says that he is a member of the firm of Pforzheimer & Keller, doing business in the city and county of New York; that the three promissory notes hereto annexed, drawn to the order of said Pforzheimer & Keller, by W. H. Craft, are wholly unpaid, and no part of either of said notes has at any time been paid, and that there is now due and owing to said Pforzheimer & Keller on said annexed promissory notes, respectively, $128.00, with interest thereon from May 9, 1879, at ten per cent. per annum; $128.13, with interest thereon from June 9th, 1879, at ten per cent. per annum, and $215.27, with interest thereon from August 24, 1879, at ten per cent. per annum.

DAVID KELLER.

Sworn to before me this 22 day of August, 1882.

THOMAS H. COOK,
Notary Public, N. Y. Co.

Intervening Petition of Dolwer S. Spaulding.

Dolwer S. Spaulding shows to the court that said Craft, on the 15 of Sept, '78, and March 5, '79, purchased of him, on credits of 4 months, goods to the value of $82.50, a bill of particulars
158 of which is filed herewith as part hereof, marked Exhibit "A;" that said indebtedness, with interest from maturity, is due and wholly unpaid.

And the nar-ator prays permission to become a party plaintiff in the above-entitled action and share in the fund arising therein, & for all other proper relief.

DOLWER S. SPAULDING,
By HORACE SPEED, *His Att'y.*

HORACE SPEED, *Of Counsel.*

MANSFIELD, MASS., *Aug.* 26, 1882.

New York office, 176 Broadway.

Mr. W. H. Craft.

Bought of D. S. Spaulding, manufacturer of tortoise-shell jewelry and combs inlaid with solid gold; also bracelets, brooches, ear-rings, chains, etc. Plated jewelry and silver chains, buttons, studs, and every variety of goods of the best quality made to order in the above-mentioned line:

1878.				
Sept. 18.	¼ doz. neck-chains, each 15 32 42 42 27 467–464–471, 463, 431	39 50		
	⅙ " " " " 39 42 42 434–470–465	20 50		
	⅙ " ear-drops 2 363	2 00		
	¼ " G. F. buttons, each 9 9 377–331	4 50		
				66 50
1879.				
Mar. 5.	⅙ doz. sets, each 42 54 469, 513	16 00		16 00
				82 50
	Interest at 6% on { $66.50 from June 18, '79 to Aug 26, '82 / 16.00 " July 5, '79 " " 26, '82 }			17 40
				99 90

STATE OF MASSACHUSETTS, }
County of Bristol, Town of Mansfield, } *ss:*

159 On the 30th day of August, A. D. 1882, before me personally came Dolwer S. Spaulding, to me known and to me known to be a manufacturer of jewelry in the town of Mansfield, who, being by me duly sworn, said that W. H. Craft, of Indianapolis, Indiana, is justly indebted to him in the sum of eighty-two & $\frac{50}{100}$ dollars, with interest from the 18th day of January, 1879, as per bill attached; that no part thereof has been paid; that the full amount is due and owing to said Spaulding, and that he holds no security therefor, and that all just offsets have been allowed.

D. S. SPAULDING.

BRISTOL, *ss:*

Subscribed and sworn to before me this 30th day of August, A. D. 1882.

[SEAL.] HOWARD PERKINS,
Notary Public.

Intervening Petition of Albert Lorsch.

Albert Lorsch shows to the court that in Sept., Oct., & Nov., 1878, said Craft bought of him goods of the value of $104.25 on credits of 4 months, a bill of particulars of which sales is filed herewith as part hereof, marked Exhibit "A;" that said indebtedness is still due & unpaid, and the nar-ator prays permission to join as plaintiff in the above-entitled cause & share in the fund arising therein, and for all other proper relief.

ALBERT LORSCH,
By HORACE SPEED,
His Attorney.

HORACE SPEED, *Of Counsel.*

160 NEW YORK, *August* 21, 1882.

Mr. W. H. Craft, Indianapolis, Ind.

Bought of Albert Lorsch, importer & manufacturer of watches and jewelry, patent accomm-dating spectacles & eye-glasses, precious stones, pearls, cameos, &c., 37 Maiden Lane.

P. O. box 2139.

1878.

Sept. 30.	2 pr. gold frames, single, 10 kt., 4.00	8 00	
	2 " " " 14 " 5.00	10 00	
	2 " silver " extra heavy	1 25	
	1 dz. pc. cx. lenses	1 50	
			20 75
26.	6 silver 20*l* watches, 25594–9, 7.50	45 00	
	2 " *proys* " 22711–22707, 7.00	14 00	
	2 20*l* " S. W., 13059–14000, 11.50	23 00	
	2 10-k. single frames, 4.00	8 00	
	2 14-k " " 5.00	10 00	
	1 silver " " extra heavy	1 00	
			101 00
Oct. 2.	½ gro. spectacle cases, 472, 9.00	4 50	
	½ " eye-glass " 2, 6.00	3 00	
	Stamping 1 gro. cases	2 00	
			9 50
			131 25
Nov. 4.	Cr. by returned:		
	4 5		
	3 prs. frames, each 10 & 14 k.		27 00
			$104 25

STATE OF NEW YORK, }
City & County of New York, } *ss.:*

Before me, Henry C. Banks, commissioner in New York
161 city, appointed by the Governor of the State of Indiana, personally appeared Alfred Krower, who, being by me duly sworn, did depose and say that he is the attorney-in-fact of Albert Lorsch.

That the within account between Albert Lorsch and W. H. Craft, of Indianapolis, Indiana, is a correct transcript from the books of original entry of said Lorsch; that the charges are correct, and the account just and true as stated.

That there is now due and owing thereon to the said Lorsch from the said W. H. Craft the sum of one hundred and four dollars and twenty-five cents, with lawful interest to be added thereto, no part of which said sum or interest has been paid, and that there are no offsets or credits against the same, and that said Lorsch holds no security for or on account of said claim.

ALBERT LORSCH.
Per ALFRED KROWN, *Att'y.*

Subscribed and sworn to before me this 21st day of August, A. D. 1882.

Witness my hand and official seal.

[SEAL.] HENRY C. BANKS,
Comm'r for Indiana, 30 John Street, New York City.

162 *Intervening Petition of John W. Steele.*

John W. Steele shows to the court that said Craft bought of the firm of Brainerd & Steele, composed of himself and Dyer Brainerd, on Nov. 4th, 1878, goods to the value of 20.62 for cash (which, in the language of the trade, means cash within 30 days), a bill of particulars of which is filed herewith as part hereof, marked Exhibit "A;" that he is the successor to said firm and the owner of said claim; that said sum, with interest thereon from Dec. 4, 1878, is due & unpaid, and the nar-ator prays permission to file this claim, become a plaintiff in the above-entitled cause, and share in the fund arising therein, & for all other proper relief.

JOHN W. STEELE,
By HORACE SPEED,
His Att'y.

HORACE SPEED, *Of Counsel.*

"A."

Dyer Brainerd. John W. Steele.

NEW YORK, *Nov. 4th*, 1878.

Mr. W. H. Craft.

Bought of Brainerd & Steele, manufacturing jewelers, No. 9 Maiden Lane.

2 doz. c. buttons, @ 1.50	3
¼ " " @ 16½	4 12
15½ doz. bracelet chains, @ 15	7 50
1 pr. onyx shawl pins	6 00
	$20 62
Interest, @ 6%, to August 17, 1882, being 3 yrs. 9 mos. & 14 dys	4 70
	$25 32

163 STATE OF NEW YORK, } ss:
City and County of New York, }

John W. Steele, of the late firm of Brainerd & Steele, of the city and county and State of New York, being duly sworn, says that he, as successor to the above-mentioned firm, is the owner of the account hereto annexed; that there is due him thereon from W. H. Craft, of Indianapolis, Indiana, the sum of twenty-five dollars and thirty-two cents; a copy of the itemized bill is annexed hereto and marked "A" and made a part hereof; that said claim is just and lawful; that there are no offsets thereto, and that the said John W. Steele holds no collateral or personal security whatever therefor.

JNO. W. STEELE.

Witness my hand and official seal this 21st day of August, A. D. 1882.

[SEAL.] S. ALLAIR MORDEN,
Commissioner of Indiana, Residing in the State of New York.

And afterwards, to wit, at the May term of said court, on the 2d day of September, A. D. 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

164 Comes now Rogers, Smith and Company, by McMasters & Boice, their solicitors, and file their intervening petition herein in the words following, to wit:

Your petitioner, Rogers, Smith & Co., a corporation organized and doing business under the laws of Connecticut, shows to your honor that William H. Craft, a resident & citizen of Indianapolis and State of Indiana, is indebted to petitioner in the sum of two hundred and eighty-five & $\frac{65}{100}$ dollars, with interest thereon, for goods, wares, and merchandise heretofore sold and delivered by petitioner to said Craft at his special instance and request, as shown by a verified bill of particulars filed herewith, made part hereof, and marked Exhibit "A;" that said sum of money was long since due and is wholly unpaid, although said Craft has often been requested to pay the same;

that said indebtedness was contracted prior to the 5th day of April, 1879, and bears interest at the rate of six per cent. per annum. Your petitioner further shows that said Craft is now and was at the time said debt was contracted wholly insolvent.

Wherefore petitioner prays to be made a party to said suit
165 of William Smith *et al. vs.* William H. Craft *et al.* upon such terms as to the court may seem just & equitable and to be allowed to share in the funds arising from said suit, the same to be applied to petitioner's said claim aforesaid, and for all other proper relief.

ROGERS, SMITH & CO.,
By McMASTERS & BOICE, *Sol'rs.*

EXHIBIT "A."

Duplicate.

MERIDEN, C'T, ——, 188–.

Mr. W. H. Craft, Indianapolis, Ind.

Bought of Rogers, Smith & Co., manufacturers of electro-silver plate.

1817	1	basket, chas.	7	
1816	1	"	10	50
1808	1	"	13	50
1803½	2	" B., 5.50	11	
283	2	vases, fancy, 7.50	15	00
307	2	" sil. & g't x x g't	15	00
17	1	salt castar	6	
54	2	casters & 11 chas., 6.50	13	
58	2	" 512, 5.00	10	
85	1	berry	8	50
162	1	"	7	
27	1	tiller, D., chas., P.	36	
1930	1	coffee, chas.	12	
"	1	tea, 6, "	10	
"	1	sugar, "	6	75
"	1	cream, " g't	8	25
4961	1	butter, "	5	50
4962	1	butter, chas.	6	75
166	43	1 jewel	9	
	9	1 pickle	3	
143	1	pickle	4	
115	1	cup, chas., g't	3	25
117	1	"	3	50
9	1	"	1	50
8	1	"	1	50
5	2	" 1.25	2	50
4	2	cups, sar., chas., g't, 1.50	3	00
118	1	cup, eng'd, g't	3	75
	1	doz. laurel, H. S. Med. Kular	21	50
			258	25
		40 %	103	30
				154 95

052	1 port-mon-*ey* x g't, in case	6 50		
053	1 " "	6 50		
				13 50
	Forward			167 95
12	3 doz. wine dess. kin., 3.25	9 75		
"	6 " med. kin., 3.50	21		
"	6 " " 3.50	21		
	Net			51 75
	2 " laurel med. f'ks, 12, 14.50	29		
	2 " " tab. sps., 12, 14.50	29		
	3 " " tea " 6, 7.25	21 75		
	½ " " sug. s., 9	4 50		
		84 25		
	40 %	33 70		
				50 55
Jan. 22				$270 25
1488	1 fruit st.	24 00		
	40 %	9 60		
		14 40		

Sent to Mrs. Lizzie Joseph, Washington, D. C.

Paid ex.	1	
		15 40
		270 25
		$285 65

Monthly Statement.

Mr. W. H. Craft, Indianapolis, Ind., in account with Rogers, Smith & Co.

Jan'y 22.	To mdse.	15 40	
Feb'y 22.		270 25	
			285 65

Interest after 4 mos.

167 C. Berry Peet, being duly cautioned and sworn, deposes and says that he is secretary of Rogers, Smith & Company, a corporation located and doing business at Meriden, in New Haven county, Connecticut, and that he is authorized to make this proof; that there is due and owing to said Rogers, Smith & Co. from W. H. Craft the sum of two hundred and eighty-five & $\frac{65}{100}$ dollars (besides interest) for goods, wares, & merchandise, as per Exhibit "A," hereto annexed; that there exists no set-off or counter-claim against the same, and said company have no security therefor.

C. BERRY PEET,
Sec. Rogers, Smith & Co.

STATE OF CONNECTICUT, } ss:
New Haven County, }

MERIDEN, *August* 30, 1882.

Personally appeared C. Berry Peet, secretary of Rogers, Smith & Co., and made oath to the within and above before me.

[SEAL.] GEORGE A. FAY, *Notary.*

And afterwards, to wit., at the May term of said court, on the 4th day of September, A. D. 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

168 Comes now the New York Morocco Case Company, by Horace Speed, Esq., their solicitor, and file their intervening petition herein in the words following, to wit: Charles G. Einfuehrer, August Troescher and Anton Geiger, copartners under the firm name of N. Y. Morocco Case Co., show to the court that said William H. Craft is indebted to them for goods sold, as shown by the bill of particulars and certificate attached hereto as part hereof and marked Exhibit "A;" that said sum is due and wholly unpaid, and the nar-a-tors pray leave to file their claim and become parties plaintiff in the above-entitled cause and share in the fund arising therein, & for all other proper relief.

CHARLES G. EINFUEHRER,
AUGUST TROESCHER,
ANTON GEIGER,
By HORACE SPEED,
Their Solicitor.

HORACE SPEED, *Of Counsel.*

A. Troescher. C. G. Einfuehrer. A. Geiger.

69 NASSAU STREET, NEW YORK, *December* 6, 1878.

William Harry Craft, Indianapolis, Ind.

Bought of the N. Y. Morocco Case Co. Cases for jewelry, watches, silverware, &c., of any quality & style. Show-cases & window-fittings a specialty; black walnut, mahogany, and fancy wood boxes.

Terms, cash; monthly settlements.

½ doz.	watch-cases, round shape,	15.00	7 50	
½ "	" do.,	8.00	4 00	
½ "	G. necklace cases,	17.00	4 25	
¼ "	band bracelet do.,	21.00	5 25	
				21 00
	Interest			5 25
				$26 25

169 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Charles G. Einfuehrer, being duly sworn, says that the annexed account against William H. Craft is correctly copied from the books of original entry of Charles G. Einfuehrer, August Thrascher, and Anton Geiger, who carry on business under the name "The N. Y. Morocco Case Co.;" that the charges were made in said book at or about the time of their respective dates; that the goods for which said charges were made were sold and delivered as charged; that the charges are correct and the account just and true as stated; that there is now due and owing thereon from the said William H. Craft to the said deponent's firm the sum of twenty-one dollars, and interest thereon from December 6, 1878; that no part of said sum has ever been paid or in any manner settled; that there are no deductions, offsets, or counter-claims, except such as are specified in said annexed account, and neither deponent nor his said firm hold any security for said debt or any part thereof.

CHARLES G. EINFUEHRER.

Sworn to before me this 6th day of September, 1882.

GEO. C. DE LACY, [SEAL.]
Notary Public, N. Y. City & Co.

170 And afterwards, to wit, at the May term of said court, on the 7th day of September, A. D. 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now H. Elcox & Company, by J. E. Florea, their solicitor, and file their intervening petition herein in the words following, to wit:

Come Henry Elcox and Frederick L. Larter, copartners doing business under the firm name and style of H. Elcox & Co., citizens and residents of the State of New York, and represent to the court and say that William H. Craft is indebted to them two hundred seventy-five and $\frac{65}{100}$ dollars, and interest thereon from June 1st, 1879, for goods & merchandise sold and delivered by the complainants to the said Wm. H. Craft, at his instance and request, during the year- 1878 and '79. A bill of particulars, properly verified, is filed herewith and made a part, marked "A;" all of which is due and wholly unpaid; and complainants ask the leave of court to file this their intervening petition in this cause and to share in any moneys held or to be held by the court from property belonging to said W. H. Craft, sold as alleged in the bill of complaint, and for any and all proper relief.

H. ELCOX & CO.,
By JOSH. E. FLOREA, *Solicitor.*

JOSH. E. FLOREA, *Of Counsel.*

171 All claims to be made within ten days from receipt of goods.

Henry Elcox. F. H. Larter.

NEW YORK, *Nov.* 20, 1878.

Mr. Harry Craft.

Bought of H. Elcox & Co., manufacturing jewelers, No. 21 Maiden Lane; factory, 23 Marshall street, Newark, N. J.

Cutting letter in locket		$1
10 12½ 15 19		
Dec. 12, 1878:		
1 onyx locket, ea. 150–151–152–153	56 50	
130 17		
2 p'r buttons, ea. 27 & 650–28, @ 8½	30	
4 4½		
1 " gold buttons, ea. 114–114e.	8 50	
3 incrusted ame. rings, @ 3.75	11 25	
2 " " &c., rings, @ 6½	13	
1 " " " "	8 50	
1 " garnet, &c., ring	9 00	
3 cameo rings, @ 1.50	4 50	
10–14		
2 scarf pins, ea. 5 – 7	24 00	
1 " "	7 50	
1 garnet pin	7 50	
2 " rings, @ 7.50	15	
	195 25	
15%	29 28	
	165 97	
1 dz. misses' carved ring	7 50	
1 double cameo locket, $22; ½ but., 10	32 00	
1 bar pin	5	
22½ five cameo rings, @ 95c.	21 38	
		231 85
Feb. 26, 1879:		
1 ame. & pearl ring	7 50	
1 inlaid ame. & pearl ring	10 50	
2 full fig. cameo, @ 5	10	
	28	
15%	4 20	
	23 80	
3 10" full cameo rings, @ 6	18	
		41 80
Mar. 20, 1879:		
Cutting letters on ring		1

Statement.

NEW YORK. *Sep.* 5, 1882.

Mr. Harry Craft to H. Elcox & Co., Dr.

1878.				
Nov. 20.	To mdse.		1	
Dec. 12.	"		231	85
1879.				
Feb. 26.	"		41	80
Mar. 20.	"		1	
			$275	65

Bills due 4 ms. from date.

172 STATE OF NEW YORK, } *ss:*
City & County of New York, }

Frederick H. Larter, being duly sworn, doth depose and say that he is a member of the firm of H. Elcox & Co., which is composed of Henry Elcox and deponent; that the annexed statement of the account of said firm against Harry Craft, now or lately doing business at Indianapolis, in the State of Indiana, is just, true, and correct; that there is now due said firm thereon the sum of two hundred and seventy-five $\frac{65}{100}$ dollars, with interest from the 1st day June, 1879; that no part thereof has been paid or satisfied, and that there are no set-offs or counter-claims thereto, to the knowledge or belief of deponent, and said firm hold- no note, collateral, or other security for said amount.

FRED'K H. LARTER.

Sworn to before me this fifth day of September, 1882.

[SEAL.] WILLIAM J. MICHOLSON,
Notary Public, New York County.

And come also Hagstoz and Thorpe, Spies and Rosswig and James F. Angel, by Horace Speed, Esq., their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

173 Thomas B. Hagstoz and Charles N. Thorpe, copartners und- the firm name of Hagstoz and Thork, show to the court that said Craft — indebted to them for goods purchased, as shown by the bill of particulars filed herein as part hereof, marked Exhibit A, with interest thereon from Dec. 16, 1878, which is still due and unpaid.

And the nar-ators pray leave to become parties plaintiff and share in the fund in the above-entitled cause, and for all proper relief.

THOMAS B. HAGSTOZ,
CHARLES N. THORPE,
By HORACE SPEED,
Their Sol.

HORACE SPEED, *Of Counsel.*

Subject to draft if not paid at maturity.

PHILADELPHIA, *Dec.* 16, 1878.

Mr. W. H. Craft.

Bought of Hagstoz & Thorpe, manufacturers of watch-cases, Nineteenth and Brown street.

14297	1 R. B. A. F. shell		24	
14031	1 F. B. H'r'g T. & B		25	
11444	1 " " "	14@	23	
			72	
	Less 10%		7 20	
				64 80
	Interest to date			14 26
				$79 06

STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss:*

Before me, the subscriber, a notary public for the Common-
174 wealth of Pennsylvania, residing in the city of Philadelphia, personally appeared Charles Orcutt, who, being duly sworn or affirmed according to law, doth depose and say that the annexed account against W. H. Craft is correctly copied from the books of original entry of Hagstoz & Thorpe; that the charges were made in said books at or about the time of their respective dates; that the goods for which said charges were made were sold and delivered as charged; that the charges are correct and the account just and true as stated; that there is now due and owing thereon the sum of sixty-four and $\frac{80}{100}$ dollars, with interest from December 16, 1878; that no part of said sum has ever been paid or in any manner settled, and that there are no deductions or offsets of any kind, except such as are therein specified and credited, and said firm is composed of Thomas B. Hagstoz and Charles N. Thorpe.

CHARLES ORCUTT.

Sworn or affirmed to and subscribed before me this 18th day of August, A. D. 1882. In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

[SEAL.] J. R. MASSEY,
Notary Public.

175 *Intervening Petition of Spies and Rosswog.*

Constantine Rosswog and Casper Spies, copartners under the firm name of Spies and Rosswog, show to the court that said Craft bought goods of them as such partners, as shown by the bill of particulars attached hereto as part hereof, marke- Exhibit "A," which is due and unpaid, with interest as therein stated.

And the nar-ators pray the court for permission to become parties plaintiff and share in the fund arising in the above-entitled cause, and for all proper relief.

CONSTANTINE ROSSWOG,
CASPER SPIES,
By HORACE SPEED.

HORACE SPEED, *Of Counsel.*

EXHIBIT "A."

NEW YORK, *November* 30, 1878.

Mr. Harry Craft.

Bought of Spiess & Rosswog, succeede- by Rosswog & Son, manufacturers of fine jewelry, Nos. 9 & 11 Maiden Lane; new Nos., 5 & 7.

Terms, 4 mos.

No.			
	177	1 dean cameo geat locket	20
	258	1 " "	16
	357 & 359	2 amethyst & pearl rings, @ 6	12
	360	1 garnet " ring	5
			$53 00

176 UNITED STATES OF AMERICA, }
City, County, & State of New York, } *ss:*

Before me, the undersigned, a commissioner, &c., in and for the State of New York, duly appointed by the Governor of the State of Indiana, with authority to administer oaths, &c., and to take depositions to be used in that State, personally appeared Constantine Rosswog, who, being by me duly sworn, did depose and say that he is a member of the firm of Spiess & Rosswog, which firm consists of Casper Spiess and Constantine Rosswog, now in liquidation; that the forggoing and annexed account between said firm of Spiess & Rosswog and William H. Craft, commonly known as Harry Craft, of Indianapolis, Indiana, is correctly made out from the books of original entry of the said firm; that the charges are correct and the account just and true as stated; that there is now justly due and owing thereon to the said firm of Spiess & Rosswog from said William H. Craft the sum of fifty-three dollars, with interest thereon from April 1st, 1879, no part of which said sum or interest
177 has been paid or in any manner settled, and that there are no deductions or offsets of any kind; that the said firm of Spiess & Rosswog hold no personal or collateral security or satisfaction whatever for or on account of said claim, and said claim is just, true, and fair.

CONSTANTINE ROSSWOG.

Subscribed and sworn to before me this 5th day of September, A. D. 1882, as witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Indiana in New York.

Intervening Petition of James F. Angell.

James F. Angell shows to the court that said Craft is indebted to him for goods bought according to the bill of particulars filed herewith as part hereof, marked Exhibit "A," which is due and unpaid, with interest thereon as therein stated.

And the nar-ator prays permission to become a party plaintiff and share in the fund arising in the above-entitled cause, & for all proper relief.

JAMES F. ANGEL,
By HORACE SPEED, *His Att'y.*

HORACE SPEED, *Of Counsel.*

178 *Statement.*

NEW YORK, *Sept.* 4, 1882.

Mr. Harry Craft, in account with James F. Angell, manufacturer of jewelry, 176 Broadway, Howard Building, rooms 13 & 14.

1878.				
Nov. 19.	To mdse.	67		
22.	" "	57	25	
Dec. 6.	" "	23	95	
				$148 20
Int. 3 yrs. 8 mos., at 6%				32 61
				$180 81

CITY AND COUNTY OF NEW YORK, *ss*:

I, James F. Angell, manufacturer of jewelry in said city, being duly sworn, says that the annexed claim of one hundred and eighty dollars and ninety-one cents ($180.91) is justly due and owing to this deponent; that no payments have been made thereon, and that there are no securities with deponent therefor; and that there are no offsets to the same to the knowledge of this deponent.

JAMES F. ANGELL.

Sworn to before me this fourth day of September, 1882.
[SEAL.] CHARLES S. ENSIGN,
Notary Public, Kings County.

Cert. filed in N. Y. Co., clerk's office.

179 And afterwards, to wit, at the May term of said court, on the 8th day of September, A. D. 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now the Wilcox Silver Plate Company and Juergens and Anderson, by Horace Speed, their solicitor, and file their separate intervening petitions herein, respectively, in the words following. to wit:

The Wilcox Silver Plate Company, a corporation organized and existing under the laws of the State of Connecticut, shows to the court that said Craft is indebted to it for goods purchased, as shown by the bill of particulars attached hereto and marked Exhibit "A,"

which remains due and unpaid, with interest thereon from *from* June 21, '79.

And the nar-ator prays leave to file its claim, become a party plaintiff, and share in the fund arising in the above-entitled cause, & for all proper relief.

WILCOX SILVER PLATE COMPANY,
By HORACE SPEED, *Its Solicitor.*

HORACE SPEED, *Of Counsel.*

180 MERIDEN, CONN., *Feb'y* 21, 1879.

Mr. W. H. Craft, Indianapolis, Ind.

Bought of Wilcox Silver Plate Company, manufacturers of the finest quality of electro-plate castor, wine, & pickle bottles.

Address communications, Meriden, Conn.
Terms, 4 mos.

1 0568 caster, 6–127	11	
1 0530 " 6–129	10 50	
1 0544 " 6–129	11 50	
1 0549 " 6–176, 22, bell	11 50	
1 0672½ pickles, 4.50	9 00	
1 0672 "	8 00	
1 1945 jewel	11 50	
1 1430 sp. hal- g't	9	
1 3 nut bowl chgt.	24	
1 0532 caster, 5–100	6	
1 0531 " 5–129	6	
1 1956 cup pl. g't	5	
	123	
40%	49 20	
		73 80
½ doz. 310 pob. boxes, 12.00	6	
25%	1 50	
		4 50
		78 30
2 01 cases crown K. P. & Sp., 3.50	7	
1 01 " bouq. " " "	3 50	
	10 50	
1 box ex	4 50	
40%		5 99
		84 29

Duplicate.

Interest to Aug. 21, '82, ac't due June 21, '79, 3 yrs. 2 mos.	15 04
	$109 25

181 STATE OF C'T, } ss:
New Haven Co., Town of Meriden, }

Personally appeared before me, Lewis Hall, a notary public in and for said State of Connecticut, Samuel Green, the treas. of the Wilcox Silver Plate Company of said Meriden, and made oath that the statement of sundry mdse. hereunto annexed is correct, and that the sum of one hundred dollars and twenty-five cents is justly due from said W. H. Craft to the said Wilcox Silver Plate Co. for said mdse. and interest on the same.

Dated at Meriden, C't, Sept. 5, 1882.

LEWIS HALL, [SEAL.]
Notary Public.

Intervening Petition of Juergeus & Anderson.

Paul Juergeus and Sebastian Anderson, copartners under the firm name of Juergeus & Anderson, show to the court that said Craft is indebted to them for goods & merchandise, sold as per the bill of particulars filed herewith as part hereof, marked Exhibit "A,"
182 which sum is still due and unpaid, with interest thereon from June 14, 1879.

And the nar-ators pray leave to file their claim, become parties plaintiff, and share in the fund arising in the above-entitled cause, and for all other proper relief.

PAUL JUERGEUS,
SEBASTIAN ANDERSON,
By HORACE SPEED,
Their Sol'r.

HORACE SPEED, *Of Counsel.*

CHICAGO, *Sept. 1st*, 1882.

Mr. W. H. Craft, Indianapolis, Ind.

Bought of Juergeus & Anderson.

1879.		
Feb. 8.	To mdse.	123 28
1879.	CR.	
Feb. 8.	By mdse. returned	32 00
		$91 28

STATE OF ILLINOIS, } ss:
County of Cook, }

Paul Juergeus, duly sworn, deposes and says that he is a member of the firm of Juergeus & Anderson, and that said firm is composed of Paul Juergeus and Sebastian Anderson, and that the foregoing statement is correct, to the best of his knowledge and belief.

PAUL JUERGEUS.

183 Subscribed and sworn to before me this 11 day of September, A. D. 1882.

[SEAL.] CARL OHM,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 15th day of September, A. D. 1882, before Honorable Walter Q. Gresham, judge, the following further proceedings in the above-entitled cause were had, to wit:

Come now Baldwin, Sexton & Peterson, and Aiken, Lambert & Company, by Rooker & Hatch, their solicitors, and file their intervening petitions herein, respectively, in the words following, to wit:

M. G. Baldwin, A. W. Sexton, R. N. Peterson, T. S. Gorton, partners, doing business under the firm name and style of Baldwin, Sexton and Peterson, now respectfully represent and show unto this honorable court that said defendant, William H. Craft, is indebted to them in the sum of one hundred and fifty-five and $\frac{12}{100}$ dollars for goods, wares, and merchandise sold and delivered to him at his special instance and request, an account of which is filed
184 herewith and made part hereof, marked Exhibit "A"; and, further, that the same is due and unpaid, with interest at the rate of 6 %, from January 10, 1879.

Wherefore your petitioners pray leave to file their claim herein, become parties plaintiff, and share in the fund arising in above-entitled cause, and for any and all further relief.

BALDWIN, SEXTON & PETERSON,
By ROOKER & HATCH, *Their Sol'or.*

ROOKER & HATCH, *Of Counsel.*

W. G. Baldwin. N. W. Sexton. R. N. Peterson. T. S. Gorton.

NEW YORK, *January* 10, 1879.

Mr. W. H. Craft.

Bought of Baldwin, Sexton & Peterson, manufacturers of rich jewelry, dealers in diamonds, pearls, rubies, etc., 692 & 694 Broadway, cor. 4th St.

All mountings & special orders, net cash.
Terms, 90 days.

2 dies, 87, 1¼, 60	75	
4 " 23, 1⅜, 45	61	87
1 p'r m't'gs, 8, 10.25, 1	18	25
	155	12

STATE OF NEW YORK, }
City & County of New York, } *ss:*

R. N. Peterson, being duly sworn, doth depose and say that the above bill is true & correct; that no part of the same has been

185 paid or assigned, and that the amount claimed, to wit, one hundred and fifty-five $\frac{12}{100}$ dollars, is now justly due and unpaid.

R. M. PETERSON.

Sworn to before me this 25 day of August, 1882.

HENRY K. THOMAS, [SEAL.]
Notary Public, Kings C., N. Y.

Certified in N. Y. city.

Intervening Petition of Aiken, Lambert & Co.

James C. Aiken, Henry Lambert, & John B. Shea, partners under the firm name and style of Aiken, Lambert & Co., would respectfully represent and show under this honorable court that said defendant, W. H. Craft, is indebted to them in the sum of one hundred and forty-two & $\frac{27}{100}$ dollars for goods, wares, & merchandise sold and delivered to him at his special instance and request, an itemized account of which is filed herewith and made part hereof, marked Exhibit "A;" and, further, that the same is due and unpaid, with interest from Dec. 28, 1878, at 6 %.

Wherefore your petitioners pray leave to file their claim
186 herein, become parties plaintiff, and share in the fund arising in above-entitled cause, and for any and all proper relief.

AIKEN, LAMBERT & CO.,
By ROOKER & HATCH,
Their Solicitors.

ROOKER & HATCH, *Of Counsel.*

James C. Aiken. Henry A. Lambert. John B. Shea.

NEW YORK, *Dec. 28th*, 1878.

Mr. W. Harry Craft, Indianapolis, Ind.

Bought of Aiken, Lambert & Co., manufacturers of fine jewelry, gold pens, watches, etc., No. 23 Maiden Lane.

Terms, 4 mos.

1878.			
Dec. 20.	1 stone intag., @ 1.38, & cameo pencil, @ 1.37	2 75	
	1 bean pencil & compass	1 13	
	1 pearl pick	2 25	
	$\frac{1}{6}$ dz. cell keys, @ 15.00	2 50	
	$\frac{1}{12}$ " 18-k. Eng. keys, @ 15.00	1 25	
			9 88

4 mos. (del. by Hudson from samples).

Dec. 20.	(Dec. 20th.)		
65295	1 *1* 18-kt. h't'g shell case	43 60	
20952	1 gill agas minet	18 00	
			61 60

Note: (Dec. 20th.)

Dec. 20.	¼ doz. 14-kt. b'nd rings, @ 27.00	6 75	
	¼ " 10 " " " " 10.50	2 62	
	¾ " 10 " " " No. 59, 10.50	7 88	
	5½ " 10 " " " " 1, @ 24.00	10 00	
	¾ " 10 " " " " 10, " 8.00	6 00	
	¼ " 10 " " " " 17, " 21.00	5 25	
	¼ " 14 " misses' " 12.00	3 00	
	2 14-kt. misses' stone rings, @ 3.50	7 00	
	4 10 " am'y'st " @ 2.00	8 00	
	450 225 350 400		
	1 14 " " ring, 3–200–256½–325	14 25	
			70 75
			$142 23

187 STATE OF NEW YORK, *City & County of New York:*

Henry A. Lambert, of the firm of Aiken, Lambert & Co., being duly sworn, says that the foregoing & above bill of goods sold & delivered to W. H. Craft is just & true in each & every particular.

HENRY A. LAMBERT.

Subscribed and sworn to before me this 26th day of August, 1882.

[SEAL.] GLEN CUYLER,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

And on the same day, to wit, the 15th day of September, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Samuel Eichberg, by Charles A. Dryer, his solicitor, and files his intervening petition herein in the words following, to wit:

Your petitioner, Samuel Eichberg, a citizen of the State of New York and city of New York, respectfully shows unto your honors that William H. Craft, a citizen of Indianapolis, Indiana, is
188 indebted to him in the sum of seven hundred (700) dollars, with interest thereon at 10 %, as evidenced by three promissory notes, dated Dec. 9, 1878—one for $234, due in 6 months from date; one for $234, due in 8 months from date, & one for $234, due in 9 months from date, all bearing interest at 10 % per annum after maturity, which are filed herewith, marked Exhibits A, B, & C; that said indebtedness accrued in favor of your petitioner while said Craft was doing business in Indianapolis, Indiana, prior to the 5th day of April, 1879; that said Craft has failed to pay the same, though frequently asked so to do, and your petitioner says that said Craft has ever since said date been and still is insolvent.

And your petitioner prays the court that he be made a party to said suit of William H. Smith *et al. vs.* William H. Craft *et al.* upon such terms as to the court may seem just, and to be allowed to share in the fund arising from said suit, and to that end said petitioner

prays your honors that he may file said claim, and your petitioner prays that said notes be allowed in full for $700 and interest after maturity, at 10 % per annum, and for all proper relief.

189 And your petitioner will ever pray, &c.

CHARLES A. DRYER,
Solicitor for Eichberg.

EXHIBIT "A."

$234.00. INDIANAPOLIS, *Dec.* 9, 1878.

Six months after date I promise to pay to the order of Samuel Eichberg two hundred thirty-four dollars, at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from maturity until paid.

W. H. CRAFT.

Due June 12.

EXHIBIT "B."

$234.00. INDIANAPOLIS, *Dec.* 9, 1878.

Eight months after date I promise to pay to the order of Samuel Eichberg two hundred thirty-four dollars, at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with interest at ten per cent. from maturity until paid.

W. H. CRAFT.

Due Aug. 12.

EXHIBIT "C."

$232.00. INDIANAPOLIS, *Dec.* 9, 1878.

Nine months after date I promise to pay to the order of Samuel Eichberg two hundred thirty-two dollars, at Fletcher's B'k,

190 for value received, without any relief whatever from valuation or appraisement laws, with interest at ten per cent. from maturity until paid.

W. H. CRAFT.

Due Sept. 12.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

Before me, Henry C. Banks, commissioner in New York, duly appointed by the Governor of the State of Indiana, personally appeared Samuel Eichberg, who, being by me duly sworn, did depose and say that W. H. Craft is justly and truly indebted to this deponent in the sum of seven hundred dollars, with ten per cent. interest to be added thereto, according to the terms of three certain promissory notes, hereto attached, made by said Craft to the order of this deponent and duly delivered by said Craft to this deponent for value received; that there is now due and owing thereon by said Craft to this deponent the said sum, with interest as aforesaid, no part of which sum or interest has been paid, and that there are no offsets against the same;

that deponent holds no security for or on account of said
191 claim; that deponent wishes to join the creditors of said Craft and participate in the surplus of his estate, and promises to share in the expenses of the suit.

S. EICHBERG.

Subscribed and sworn to before me September 22, 1882.

[SEAL.] HENRY C. BANKS,
Commissioner for Indiana, 3 John Street, N. Y. City.

And afterwards, to wit, at the May term of said court, on the 16th day of September, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Chester, Manchester and Company and Duhme & Co., by Horace Speed, Esq., their solicitor, and file their intervening petitions herein, respectively, in the words following, to wit:

Benjamin F. Chester, Thomas W. Manchester, and John Chester, copartners trading as Chester, Manchester & Company, show to the court that said Craft is indebted to them for goods purchased,
192 as shown by the bill of particulars attached thereto as part hereof, marked Exhibit "A," which is due and unpaid, with interest thereon from May 21, 1879.

And the nar-ators pray leave to file their claim, become parties plaintiff, and share in the fund arising in the above-entitled cause, and for all other proper relief.

BENJAMIN F. CHESTER,
THOMAS W. MANCHESTER,
JOHN CHESTER,
By HORACE SPEED, *Their Sol'r.*

HORACE SPEED, *Of Counsel.*

PROVIDENCE, R. I., *Feb'y* 21, 1879.

Mr. W. H. Craft, Esq.

Bought of Chester, Manchester & Co., manufacturers of gold and silver chains, No. 13 Hanover St.

3 mos. cre't:

4 10-k. F. slides, 17, 1.10	18 70
Net 6%	3 74
	$22 44

STATE OF RHODE ISLAND, } *ss:*
County of Providence, }

I, Benjamin F. Chester, of Providence, in said county and State, on oath depose and say that I am the copartner Chester in the above firm; that the foregoing amount is still due and owing from said W. H. Craft to the said firm, and that no part of the same
193 has been paid to or received by either of us, directly or indirectly.

B. F. CHESTER.

Subscribed and sworn to before me by said Benjamin F. Chester (he being personally known to me), at said Providence, on this eleventh day of September, A. D. 1882.

WILLIAM B. W. HALLETT,
Notary Public.

Intervening Petition of Duhme & Co.

Herman Duhme and Robert H. Galbreath, copartners under the firm name of Duhme & Co., show to the court that said Craft is indebted to them, as shown by the bill of particulars attached hereto as part hereof, marked Exhibit "A," which is due & unpaid, with interest thereon from May 1, 1879.

And the nar-ators pray leave to file their claim, become parties plaintiff, and share in the fund arising in the above-entitled cause, and for all proper relief.

HERMAN DUHME,
ROBERT H. GALBRETH,
By HORACE SPEED, *Their Sol'r.*

HORACE SPEED, *Of Counsel.*

194 *Statement.*

H. Duhme. R. H. Galbreath.

CINCINNATI, *Sept.* 11, 1882.

Mr. W. H. Craft to Duhme & Co., S. W. cor. 4th & Waln't St-.

1878.				
Dec.	23.	To mdse.	28	50
	"	"	125	90
	26.	"	70	50
1879.				
Jan.	3.	"	3	75
	7.	"	51	02
	8.	"	5	
	9.	"	47	10
	10.	"	43	18
	17.	"	3	25
	21.	"	65	60
	22.	"	10	
	30.	"	2	
	29.	"	15	
Feb.	11.	"	1	75
	17.	"	4	
	"	"	2	50
	19.	"	3	75
	24.	"	1	50
M'ch	3.	"	1	50
	7.	"	17	
	10.	"	27	75

M'ch 11.	To mdse.	1 50		
13.	"	7 50		
17.	"	3 00		
21.	"	17 63		
22.	"	10 75		
			570	93
1878.				
Dec. 28.	By mdse. ret'r'd	52 50		
1879.				
Apr. 3.	" cash	127 15		
			179	65
			$391	28

195 STATE OF OHIO, } ss:
County of Hamilton, & City of Cincinnati, }

By this public instrument be it remembered that on this 13th day of September, A. D. one thousand eight hundred and eighty-two, before me, the subscriber, Howard Douglass, a commissioner of deeds for the State of Indiana in Ohio, to take proof and acknowledgment of deeds, mortgages, letters of attorney, or any other instrument to be used or recorded in the State of Indiana, and to administer oaths and affirmations, to take depositions, &c., &c., appeared R. H. Galbreath, one of the firm of Duhme & Co., who, being by me duly sworn according to law, on his oath doth depose and say that the matter and things stated and set forth by him in this affidavit by him made and signed are just and true, and strictly correct in every particular; that the demand of Duhme & Co. against W. H. Craft as shown by the annexed account, is just and lawful, due and unpaid or settled by the said W. H. Craft, or by any other person or persons for him; that there is no just offset known to de-
196 ponent, either in law or in equity, against said demand; that there is now due (as aforesaid) the sum of three hundred and ninety-one $\frac{28}{100}$ dollars, exclusive of any payment, set-off, or usurious interest, and that lawful interest is due thereon from —, and that he holds no personal collateral or any security whatever for the same; that the consideration of said debt was for goods sold and delivered by deponent to said W. H. Craft at his request.

R. H. GALBREATH.

Signed in my presence and sworn — by R. H. Galbreath before me.

In testimony whereof I have hereunto subscribed my name and affixed my seal the year, month, and day first before written.

[SEAL.] HOWARD DOUGLASS,
Commissioner for Indiana in Ohio.

And afterwards, to wit, at the May term of said court, on the 18th day of September, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

197 Come now Rest Fenner Smith & Co., by Horace Speed, their solicitor, and file their intervening petition herein in the words following, to wit:

Rest Fenner Smith and Spencer C. Smith, copartners under the firm name of Rest Fenner Smith & Co., show to the court that said Craft is indebted to them upon his certain promissory note, executed in consideration of certain goods theretofore sold him by them, a copy of which is filed herewith as part hereof, marked Exhibit "A," which is due and wholly unpaid.

And the nar-ators pray leave to file their claim, become parties plaintiff, and share in the fund arising in the above-entitled cause, and for all other proper relief.

REST FENNER SMITH,
SPENCER C. SMITH,
By HORACE SPEED,
Their Solicitor.

HORACE SPEED, *Of Counsel.*

EXHIBIT "A."

$213.27. INDIANAPOLIS, *Feb'y* 13, 1879.

Sixty days after date I promise to pay to the order of Rest Fenner Smith & Co. tw- hundred thirteen & $\frac{27}{100}$ dollars at Fletcher's B'k, for value received, without any relief whatever from valuation or appraisement laws, with ten per cent. interest from date until paid, and attorneys' fees.

(S'g'd) W. H. CRAFT.

198 And afterwards, to wit, at the May term of said court, on the 30th day of September, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

By agreement of parties it is ordered that the claim of Samuel Echberg be, and the same is now hereby, filed as of date September 15, 1882.

And afterwards, to wit, at the May term of said court, on the 30 day of October, A. D. 1882, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, master in chancery, and files his report and the evidence accompanying the same under the order herein of August 16, 1882, in the words following, to wit:

Hearing before W. P. Fishback, master, Sep. 26, 1882, under order August 16, 1882.

Appearances: Horace Speed, for complainant; Taylor, Rand & Taylor, for Fletcher & Churchman.

Mr. WILLIAM H. CRAFT, being sworn, says:

No. 1. (Henry G. Reed & others.—McMaster & Boice:)

The acc't attached to the petition is correct. The amount of the said acc. is $550.01. No part of this acc't has been paid;

199 goods bo't on 4 mos., but they indulged me longer. The $550.01 represents the balance of the principal of the debt.

First goods bought April 29, 1878, $381.93. The acc't of first items, $42.88, repres-nts goods purchased prior to April 9, 1878: Dec. 5, $129.15; Dec. 14, $22.80; Jan. 24, 1879, $173.25. There is a credit Jan. 6, '79, $200.00.

I p'd, June 8, 1878, $275.60 on old indebtedness & not on the ac't.
Aug. 9, " 275.00 " " "
Sept. 9, " 275.00 " " "
Oct. 9, " 275 " " "

No. 2. (Rogers, Smith & Co.—McMaster & Boice:)

The ac't attached to pet., $285.65, is correct & bal. due for goods bo't.

Jan. 22, 1879, $15.40, four months' time.
Feb. 22, " 270.25, " " "
No part of this has — paid.

X $\frac{d}{v}$ I paid on acc't, on prior indebtedness to these petitioners:

Mar. 2, '79, $200.00.
" 31, " 206.85.

No. 3. (C. G. Alford & Co.—Mr. Speed:)

The acc't, $472.90, is correct; is bal. for goods b't at four mos.' time.

Nov. 14, 1878	$282 43
Mch. 18, 1879	190 47

No part has been paid.

For November purchase I gave notes—one for $141.00 & one for $141.43, Exhibits 3.

C'rs-ex'd:

I paid on old indebtedness, May 21, 1878, $214.80.

200 No. 4. (James F. Angell.—Mr. Speed:)

Acc't, $148.20, is correct; is for goods bo't. (No credit specified.)

Nov. 19, 1878	$67 00
" 22, "	57 25
Dec. 6, "	23 95

Nothing paid on this acc't.

Cr's-ex'd:

I paid—

Oct. 15, '78, on old indebt-ness	$81 02
Nov. 18, "	80 00
Feb. 8, '79	61 28

No. 5. (Chester, Manchester & Co.—Mr. Speed:)

The acc't is $18.70, and is correct; goods bo't Feb. 21, 1879. No specified credit. No part of this has been paid.

No. 6. (Duhme & Co.—Mr. Speed:)

Acc't, $391.28, is correct; is for goods bo't at times state- in acc't.

Dec. 23, 1878	$154 40	
26,	70 50	
Jan. —, 1879	245 90	
Feb. —, "	13 50	
M'ch —, "	86 63	
		$570 93
Credits:		
D'c. 28, '78	52 50	
Apr. —, '79	127 15	
		179 65
Bal.		$391 28

C'rs-ex'd:

I have p'd on old acc't—

Oct. 30, '78	$10 00
Jan. 5, '79	83 00
Feb. 5, "	84 00
M'ch 5, "	82 83

201 No. 7. (Hagstoz & Thorpe.—Mr. Speed:)

Acc't, $64.80, is correct; goods bo't Dec. 13, '78, & no. part paid.

No. 8. (Juergeus & Anderson.—Mr. Speed:)

Acc't, $91.28, is correct for goods bo't Feb. 8, 1879—

	$123 28
I paid Feb. 14, 1879	32 00
Bal. due	$91 28

No specified credit.

No. 9. (Lessauer & Sondheim.—Mr. Speed:)

Whole acc't, $331.50.

I bo't July 25, '78	$71 65	
Sep. 7, "	125 88	
Nov. 23, "	80 68	
Nov. 29, "	21 25	
Feb. 13, '79	131 50	
		$430 96
I paid M'ch 18, '79		99 46
Bal. due		$331 50

The notes cover $200.00 of the bal. Notes — Exhibits N. 9. Notes are unpaid & $131.50 of acc't ar- unpaid.

Cr's-ex'd:

No. 10. (Albert Lorsch.—Mr. Speed:)

Acc't for $104.25 is correct, & is for goods bo't—

Sep. 26, 1878	$101 00	
" 30, "	20 75	
Oc. 2, "	9 50	
		$131 25
I paid Nov. 4, 1878		27 00
Bal. due		$104 25

No specified credit.

202 No. 11. (Noah Mitchell.—Mr. Speed:)

Acc't is $111.50 for goods bo't—

July 17, '78	7 50
Sep. 21, '78	89 00
Dec. 24, "	7 50
" 28, "	7 50
	$111 50

No part of acc't has been paid. No credit specified.

Cr's-ex'd:

I have paid on old acc't, Nov. 16, '78, $137.40.

No. 12. (N. Y. Morocco Case Co.—Mr. Speed:)

Acc't for $21.00 is correct; is for goods bo't D'c. 6, 1878. No credit specified & no part paid.

No. 13. (Pforzheimer & Keller.—Mr. Speed:)

Acc't for $552.80 is correct for goods b't—

Sep. 27, 1878	$19 63
Dec. 6, "	236 50
M'ch 21, '79	215 27
" 24, "	81 40
	$552 80

Note given for all except last item of $81.40, & are herewith filed, Exhibits N. 13. No part of the acc't or notes has been paid.

I have paid on old indebtedness—

Oct. 5, '78	134 00
No-. 4, "	218 28
Jan. 29, '79	182 75
Feb. 29, "	182 75

No. 14. (Rest Fenner Smith & Co.—Speed :)

The note, $213.27, Feb. 13, 1879, is for goods bo't Nov. 26, 1878, $213.27, & no part has been paid. Note — in March, Exhibit 14. No specified credit.

203 No. 15. (Simpson, Hall, Miller & Co.—Speed :)

Acc't, $391.47, is correct for goods bo't—

Sept. 26, 1878	$73 65	
Oct. 1, "	92 70	
Dec. 17, "	159 90	
Feb. 12, '79	162 92	
M'ch 27, "	91 40	
		$580 57
I bo't goods on 4 mos.' credit, p'd Jan. 25, 79	$166 35	
Feb. 15, "	22 75	
		189 10
Bal. due		391 47

No part paid.

Cr's-ex'd :

On old indebtedness I paid—

July 30, '78	$105 56
Aug. 30, "	98 76
Oct. 2, "	98 80

No. 16. (D. S. Spaulding.—Speed :)

Acc't, $82.50, is correct ; is for goods bo't—

Sep. 21, 1878	$66 50
M'ch 8, '79	16 00

No part has been paid.
No credit specified.

No. 17. (Spiess & Rosswog.—Speed :)

Acc't, $53.00, is correct ; *is* bo't Nov. 30, '78, $53.00.
No part paid & no credit specified.

Cr's-ex'd :

I paid on old indebtedness, Dec. 12, 1878, $75.00.

No. 18. (Stanley Bros.—Speed :)

Ac't, $91.93, is correct ; is for goods bo't M'ch 15, '79, $91.93.
No part paid ; no credit specified.

Cr's-ex'd :

204 I p'd on old acc't—

Sep. 26, '78	$5 40
M'ch 7, '79	103 68

No. 19. (Brainerd & Steel.—Speed):

Acc't, $20.62, is correct for goods bo't Nov. 4, '78, $20.62.
No part paid; no credit specified.

Cr's-ex'd:

I paid on old acc't—

June 18, '78		$109 50
Dec. 5, "		36 25

No. 20. (Sterne Bros. & Co.—Speed:)

Acc't & notes—whole am't, $416.30—is correct for goods bo't—

Sep. 7, 1878	$171 12	
Oct. 11, "	204 25	
Nov. 27, "	136 35	
Dec. 5, "	13 50	
Jan. 27, '79	195 33	
		$720 55
I paid Oct. 8, '78	$204 25	
M'ch 17, '79	100	
		304 25
Bal. due		416 30

In. paid.
Includes three notes—$104.47, $103, & $193, Exhibits No. 20.
There are no credits & no credit specified when goods bo't.

No. 21. (R. Wallace & Sons' M'f'g Co.—Speed):

Acc't, $217.46, is correct for goods bo't—

Sept. 21, 1878	$54 24	
Oct. 24, "	74 21	
Dec. 3, "	175 59	
M'ch 25, '79	65 92	
		$370 46
I have paid Jan. 10, '79	$128 00	
M'ch 15, "	25	
		153 00
Bal. due		$217 46

205 No p'rt paid and no credit specified.

Cr's-ex'd:

I paid on old acc't, Aug. 30, '78, $59.29.

No. 22. (Simons Bros. & Co.—Speed:)

Acc't, $399.62, is correct — goods bo't—

Sep. 24, '78	$78 41
Oct. 1, "	40 05
Dec. 6, "	218 16
Jan. 20, '79	63 00
	$399 62

No part paid & no credit specified.

Cr.-ex'd:

I paid on old acc't, Nov. 26, '78, $141.95.

No. 23. (Wilcox Silver Plate Co.—Speed:)

Acc't, $84.29, is correct — goods bo't—

Feb. 14, '79	$5 99
" 21, "	78 30

No part paid & goods bo't on 4 mos.' time.

No. 24. (Sinnock & Sherrill, Wallace & Sons, claimant-, citizens of New York:)

Inspt. on acc't, $528.41, is correct — goods bo't—

Oct. 12, '78	$85 89
M'ch 2, '81, interest	4 53
Feb. 15, '79, goods	263 50
M'ch 2, '81, inst.	45 00
Feb. 28, '79, goods	109 34
M'ch 2, interest	20 15
	$528 41

Inspt.

Inspt. dated M'ch 2, 1881; no part paid. Execution issued 28th day of July, 1882, & returned "no goods" 28 July, A. D. 1882.

Cr's-ex'd:

206	I p'd on old acc't	Aug. 5, '78	$125 00
		Oct. 5, "	125
		Feb. 15, '79	85 89
		Feb. 15, "	15 50
		M'ch 15, "	85 89

No. 25. (Goldsmith & Schlusser.—Florea:)

Notes for $—, for goods bo't—

Oct. 14, 1878	$177 75
Nov. 22, "	372 86
	550 61
P'd M'ch 26, '79	183 47
Bal. due	367 14

& unpaid, & is represented by two notes for $183.57 each, Exhibit 25.

Cr's-ex'd:

Notes dated Nov. 23, '78, one in five mos. & other in 6 mos. Another note for $183.57 was given, due in four months, which has been paid. These three notes were given in settlement of that acc't.

I have paid on old acc't	Sep. 23, '78	$176	25
	Oct. 25, "	176	00
Notes marked Exhibit 25:	Nov. 25,	170	28
	Dec. 25,	176	00
	M'ch 26, '79	183	47

No. 26. (Meriden Cutlery Co.—Florea:)

Acc't for $83.80 & is correct; for goods bo't Feb. 28, 1879, $83.80, at four months; no part paid.

Cr's-ex'd:

I have paid on old acc't	Aug. 15, '78	$80	30
	Sept. 15, "	87	00
207	Oct. 22, 1878	73	10
	Feb. 27, '79	89	22

No. 27. (L. Hamniel & Co.—Florea:)

Acc't for $17.75 is correc-; bo't goods M'ch 18, 1879, $17.75.

No specified credit; no part paid.

No. 28. (Joseph Tahys.—Florea:)

Acc't for $168.95 — correct for goods bo't—

Oct. 28, '78	$36	60
Feb. 5, '79	84	85
" 7, "	47	50
	$168	95

No part paid & no credit specified.

No. 29. (H. Elcox & Co.—Florea:)

Acc't, $275.65, is correct — goods bo't—

Dec. 12, '78	$232	85
Feb. 26, '79	42	80

No part paid & no credit specified.

X'd:

I paid *paid* on old acc't—

July 6, '78	$116	
Aug 16, "	103	
Sep. 6, "	100	
Feb. 12, '79	100	
M'ch 12, "	121	23

No. 30. (Aiken, Lambert & Co.—Rooker & Hatch:)

Acc't, $142.23, is correct for goods bo't Dec. 20, 1878, $142.23.
No part paid; no credit specified.

208 No. 31. (Baldwin, Sexton & Peterson.—Rooker & Hatch:)

Acc't, $155.12, is correct for goods bo't Jan. 10, 1879, $155.12.
No part paid; no credit specified.

Cr's-ex'd:

I paid on old acc't—

Nov. 26, '78	$338 90
Sep 25, "	15 00
Jan. 24, '79	270 02
M'ch 8, '79	241 91

No 32. (Samuel Eichberg.—Mr. Dryer:)

There are three notes dated Dec. 9, 1878, marked Exhibit 32.
1 for $234 00 at 4 mos., 10% after maturity till paid.
2 " 234 " 8 " " " " " " "
3 " 232 " 9 " " " " " " "

$700 00

These notes are for goods bo't Dec. 9, 1878.
No part has been paid.

Cr's-ex'd:

I have paid Eichby on old indebtedness, not including April 2, 1879, $419.16.

NATHAN MORRIS, being sworn, says:

Am an att'y of Indiana bar & know the customary fees for collections at Indianapolis. It is 10% on am'ts up to $300; it is 7% on all am'ts in excess of $300 up to $1,000; it is 5% on all am'ts in excess of $1,000 up to $5,000, and 2½% on amounts in excess of that.

209 To the honorable court:

The undersigned, the master to whom were referred the several intervening petitions herein, by order of this court, date-August 16, 1882, respectfully reports as follows:

The claimants and intervening petitioners appeared before me, by their counsel, Sep. 26, 1882, and Horace Speed, Esq., appeared for complainants, and Taylor, Rand & Taylor for Fletcher & Churchman.

The evidence produced consisted of the exhibits and the oral evidence of the witness-, William H. Craft and Nathan Morris, all of which evidence is returned herewith and made part of this report.

I report and find that the following amounts are due the intervening petitioners as set opposite their respective names. I have calculated interest to Oct. 1, 1882, on notes & judgments,
210 and upon accounts for goods sold when the term of credit was specified. Where no term of credit was specified I have simply reported the price of the goods sold without interest.

No. 1.	To Henry G. Reed & others, McMasters & Boice		$653 92
2.	" Rogers, Smith & Co., Mr. Speed		341 78
3.	" C. G. Alford & Co., "		640 11
4.	" James F. Angell "	no interest	148 20
5.	" Chester, Manchester & Co., "	"	18 70
6.	" Duhme & Co., "	"	391 28
7.	" Hagstoz & Thorpe, "	"	64 80
8.	" Juergues & Anderson, "	"	91 28
9.	" Lessauer & Sondheim "	with int.	425 73
10.	" Albert Lorsch, "	no int.	104 25
11.	" Noah Mitchell, "	"	111 50
12.	" N. Y. Morocco Case Co., "	"	21 00
13.	" Pforzheimer & Keller, "	with int.	732 53
14.	" Restfenner Smith & Co., "	"	319 88
15.	" Simpson, Hall, Miller & Co., "	"	273 05
16.	" D. S. Spaulding, "	no int.	82 50
17.	" Spiess & Roswog, "	"	53 00
18.	" Stanly Bros., "	"	91 93
19.	" Brainerd & Steele, "	"	20 62
20.	" Sterne Bros. & Co., "	with int.	578 46
21.	" R. Wallace & Sons' M'f'g Co., "	no in'st	217 46
22.	" Simons, Bro. & Co., "	"	399 62
23.	" Wilcox Silver Plate Co., "	with int.	99 62
24.	" Sinnock & Sherrill, Wallace & Sons, att'ys, with int.		376 84
25.	" Goldsmith & Schlusser, Florea, with int.		591 55
26.	" Meriden Cutlery Co., "	"	100 22
27.	" L. Hamniell & Co., "	no int.	17 75
28.	" Joseph Fahys "	"	168 95
211 29.	To H. Wilcox & Co., Florea, att'y, no int.		275 65
30.	" Aiken, Lambert & Co., Rook & Hatch, att'ys, no int.		142 23
31.	To Baldwin, Sexton & Peterson, Rook & Hatch, att'ys, no int.		155 12
32.	Samuel Eichberg, Mr. Dryer, atty, with int.		931 68

I attach hereto & make part of this report the computations showing the amounts allowed for interest and attorneys' fees.

The petitions ar- numbered so as to identify them with the amounts reported, and the same numbers are preserved in the computations.

Respectfully submitted,

WILLIAM P. FISHBACK, *Master.*

N-. 1.	Apr. 9, '78	42 88	
	Int. Aug. 9, '78, to Jan. 24, '79, 5 ms.	1 05	
	15 d.	11	
			44 04
	Apr. 29, '78	381 93	
	Int. Aug. 29, '78, to Jan. 24, '79, 4 ms.	7 64	
	25 ds.	1 59	
			391 16

	Dec. 5, '78		129 15
			564 35
	Payment Jan. 24, '79		200
			364 35
	Int. to Oct. 1, '82, 3 ys.		65 52
	8 ms.		14 56
	5 dy.		30
			444 73
	Jan. 24, '79	173 25	
	Int. 3 yrs.	31 14	
212	3 ms.	6 92	
	5 d.	14	
			211 45
			$656 18
	Deduct int. on 129.15, Jan. 24, '79, to April 5, '79, 3 ms.	1 94	
	10 d.	22	
		2 26	2 26
			653 92
No. 2.	Jan. 22, '79		15 40
	Int. May 22, '79, 3 yrs.		2 70
	4 ms.		30
	10 d.		03
	Feb. 22, '79		270 25
	Int. June 22, '79, 3 yrs.		48 60
	3 ms.		4 05
	10 d.		45
			$341 78
No. 3.	Int. April 14, '79, @ 10		282 43
	3 yrs.		84 72
	4 ms.		9 41
	15 d.		1 17
			377 73
			30
			5 43
	M'ch 18, '79		190 47
	Int. July 18, '79, 3 yrs.		34 20
	2 ms.		1 90
	12 d.		38
			$640 11

213	No. 4. No int.			148 20
	" 5. "			18 70
	No. 6. No int.			391 28
	" 7. "			64 80
	" 8. "			91 28
	" 9. May 16, '79, 10%	200		
	Int. 3 yrs.	60		
	4 ms.	6 66		
	15 d.	83		
		267 49		
	Att'ys fees	26 94		
	Assc. (no int.)	131 50		
				425 73
	No. 10. No int.			104 25
	" 11. "			111 50
	" 12. "			21 00
	" 13. Notes due June 9, '79	128 13		
	"	128 13		
		256 26		
	Int., 10 %, 3 yrs.	76 87		
	3 ms. (25.62)	6 40		
	20 d.	1 42		
				340 95
		340 95		
	Note due Aug. 24, '79	215 27		
	Int. 3 ys.	64 50		
	1 m.	1 80		
	7 ds.	42		
		281 99		
		28 19		
				310 18
	Acc., no int.			81 40
	Total claim			732 53
214	No. 14. Note Feb'y 13, '79			213 27
	Int., 10% from date, 3 yrs.			63 97
	7 mos.			12 49
	18 days			1 07
				290 80
	Atty's fees			29 08
				$319 88
	No. 15. Sept. 26, '78	$73 65		
	Oct. 1, '78	92 70		
	Am't p'd 1-25-'79	166 35		

	Princ'p. Dec. 17, '78			159 90	
	Payment Feb. 13, '79			22 75	
				137 15	
	Int. from June 13, '79, 3 yrs.			24 66	
	3 mos.			2 06	
	18 dys.			41	
					$164 28
	Princ'p. March 27, '79			91 40	
	Int. July 27, '79, 3 yrs.			16 38	
	2 ms.			91	
	55 dys.			08	
					108 77
					$273 05
No. 16.	No int.				$82 50
" 17.					53 00
" 18.					91 93
" 19.					20 60
215	No. 20. May 30, '79		104 47		
	Int. 3 yrs.		31 34		
	4 mos.		3 48		
				139 29	
	Ap'l 3, '79		103		
	Int. 3 yrs.		30 90		
	Note, 5 mos.		4 30		
				138 20	
	April 4, '79		193 10		
	Int. 3 yrs.		58 14		
	5 mos.		8 05		
	25 dys.		1 35		
			261 34		
			26 13		
				287 47	
					$578 86
	Open acc.			13 50	
No. 21.	No int.				217 46
" 22.	"				399 62
" 23.	Feb. 14, '79		6		
	Int. June 14, '79, Oct. 1, '82, 3 yrs.		1 08		
	3 mos.		09		
	8 ds.		02		
				7 19	
	Feb'y 20, '79		78 30		
	Int. June 21, '79, 3 yrs.		14 04		
	3 mos.				
	7 ds.		09		
				92 43	
					$99 62

No. 24.	Mar. 22, '81		528 41	
	Int. 1 year		31 70	
	6 mos.		15 85	
	10 dys.		88	
				$576 84
216	No. 25. May 26, '79		183 57	
	Int. 3 yrs.		55 07	
	Note, 4 mo.		6 12	
	5 ds.		25	
	Note, Apr. 26, '79		183 57	
	Int. 3 yrs.		55 07	
	4 mo.		6 12	
	1 mo.		1 53	
	5 d.		25	
				$491 55
No. 26.	June 28, '79		83 80	
	Int. 3 yrs.		15 12	
	3 mos.		1 26	
	3 d.		04	
				100 22
No. 27.	No int.			$17 75
" 28.	"			168 95
" 29.	"			275 65
" 30.	"			142 23
" 31.	"			155 12
" 32.	June 12, '79	234		
	Int. 3 yrs.	70 20		
	3 mos.	5 85		
	20 d.	1 30		
			311 25	
	Aug. 12	234		
	Int. 3 yrs.	70 20		
	1 mos.	1 95		
	20 ds.	1 30		
			307 45	
	Sept. 12, '79	232		
	Int. 3 yrs.	69 60		
	20 ds.	1 28		
			302 88	
				$921 68

217 And afterwards, to wit, at the November term of said court, on the 27th day of November, A. D. 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now certain intervening petitioners herein, by Horace Speed, their solicitor, and file their exceptions to the report of William P. Fishback, master in chancery, in the words following, to wit:

Exceptions taken by the intervening petitioners in the above-entitled cause, to wit:

James F. Angell, Chester, Manchester & Co., Duhme & Co.,

Hagstoz & Thorpe, Juergeus and Anderson, Lessauer & Sondheim, Albert Lorsch, Noah Mitchell, N. Y. Morocco Case Co., Doliver S. Spaulding, Spriess & Rosswog, Stanley Bros., John W. Steele, R. Wallace & Sons' M'f'g Co., Simons Bros. & Co. each severally for his own claim solely excepts to the report of the master, William P. Fishback, to whom it was referred to report the amounts due the several intervening petitioners in the above-entitled cause—

First. Said James F. Angell excepts for that the said master has not allowed any interest upon his accounts (which was, as the evidence shows, bought upon no time, and payment thereof has
218 been wrongfully and unreasonably detained, which entitles plaintiff to interest from the date of purchase, but plaintiff wishes the account treated as sold on 4 months' time), whereas, including proper interest, he should have allowed $179.00 instead of $148.00, as reported by him.

Second. Said Chester, Manchester & Co. except for that said master has not allowed any interest on their account (which, as shown by the evidence, was not sold on time and was therefore due at once, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $22.40 instead of $17.70, as reported by him.

Third. Said Duhme & Co. except for that the said master has not allowed any interest on their account (which, as shown by the evidence, was not sold on time, and was therefore due at once, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all the accounts where time was stipulated for—he should
219 have *been* allowed at least $468.50 instead of $390.28, as reported by him.

Fourth. Said Hagstoz & Thorpe except for that the master has not allowed any interest on their account (which, as shown by the evidence, was not sold on time, and was therefore due at once, and payment thereof has been wrongfully & unreasonably withheld), whereas, even treating the account as sold at 4 months—the time in the accounts where time was stipulated for—he should have allowed at least $77.75 instead of 64.80, as reported by him.

Fifth. Said Juergeus & Anderson except for that the said master has not allowed any interest on their account (which, as shown by the evidence, was not sold on time, and was therefore due at once, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account as sold on 4 months' time—the time in all the accounts where time was stipulated for—he should have allowed at leas- $109.50 instead of $91.28.

Sixth. Said Lessauer & Sondheim except for that said master, apparently through an error in calculation, allowed them $425.73, whereas he should have allowed them $453.73.

220 Seventh. Said Albert Lorsch excepts for that the said master has not allowed any interest on his account (which the evidence shows was not sold on time, & was therefore due at once, and payment thereof has been wrongfully and unreasonably de-

tained), whereas, even treating the account as sold at 4 months—the time on all accounts where time was stipulated for—he should have allowed at least $127.17 instead of $104.25.

Eighth. Noah Mitchell excepts for that the said master has not allowed any interest on his account (which the evidence shows was not sold on time, and was therefore due at once, and payment has been wrongfully & unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $134.90 instead of $111.50, as reported by him.

Ninth. Said N. Y. Morocco Case Co. excepts for that said master has not allowed any interest on its account (which, as shown
221 by the evidence, was not sold on time, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $25.46 instead of $21.00, as reported by him.

Tenth. Said Pforzheimer & Keller except for that said master has, apparently through an error in calculation, allowed them $732.53 instead of $747.50, which was the true amount.

Eleventh. Said Simpson, Hall, Miller & Co. except for that said master has, apparently through an error in calculation, allowed them only $273.05 instead of $473.05, which was the true amount.

Twelfth. Said Doliver S. Spaulding excepts for that the said master has not allowed any interest on his account (which, as shown by the evidence was not sold on time, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $100.25 instead of $91.93, as reported by him.

222 Thirteenth. Spiess & Rosswog except for that said master has not allowed any interest on their account (which, as shown by the evidence, was not sold on time, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all accounts where time was stipulated for—he should have allowed at least $64.13 instead of $53.00, as reported by him.

Fourteenth. Said Stanley Bros. except for that said master has not allowed them any interest on their account (which, as shown by the evidence, was not sold on time, and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all accounts where time was stipulated for—he should have allowed at least $109.60 instead of 91.93, as reporte- by him.

Fifteenth. Said John W. Steele excepts for that said master has not allowed him any interest on his account (which, as shown by the evidence, was not sold on time, and payment thereof has been
223 wrongfully and unreasonably detained), whereas, even treating the account as sold at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $25.10 instead of $20.62, as reported by him.

Sixteenth. Said R. Wallace & Sons M'f'g Co. except for that said master has not allowed any interest on its account (which, as shown by the evidence, was not sold on time, became therefore due at once, *due* and payment thereof has been wrongfully and unreasonably detained), whereas, even treating the accounts as sold at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $258.75 instead of $217.46.

Seventeenth. Said Simons Bros. & Co. except for that said master has not allowed any interest on their account (which, as shown by the evidence, was not sold on time, and therefore was due at once, and payment thereof has been wrongfully and unreasonably withheld), whereas, even treating it as sold at 4 months—the time in all the accounts where time was stipulated for—he should have allowed at least $480.50 instead of $399.62, as reported by him.

224 In all which particulars said intervenors, each speaking and excepting of and for his own claim solely, say that the report of the master is, as they severally are advised, erroneous, and said intervenors, each for his own account solely, appeals therefore to the judgment of this honorable court.

HORACE SPEED,
Solicitor for each of said Intervenors.

HORACE SPEED, *Of Counsel.*

225 And afterwards, to wit, on the 9th day of March, 1883, at the November term of said court, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Horace Speed, Esq., and files his petition for an allowance of counsel fees in the above-entitled cause, in the words following, to wit:

To the honorable judges of said court:

The undersigned, Horace Speed, respectfully petitioning, shows to your honors that since the filing of intervening petitions in this case he has had entire charge of the actual litigation—except the mere proving of the amounts of such claims before the master—in behalf of all said intervening petition-s, and, at the request of some of them, and with the acquiescence of all of them, *moved* after the rights of the original complainants herein had been set at rest by the finding of this court, moved for and obtained an order of this court permitting all the other creditors of said Craft (*i. e.*, these intervening petitioners) to come in, prove their claims, and share in the fund remaining after the original complainants shall have been satisfied, and has seen to the proper proving of such claims, and has argued their case before this court and obtained an allowance of said claims as the same are set out in the decree in this case, dated ——; that each of said claims was

226 individual and particular and had to be considered with reference to questions which might arise as to each; that your petitioner was employed by only a portion of said intervening petitioners, but that all said intervening petitioners have had the benefit

of your petitioner's services, and through his services in their behalf their claims have been allowed and by said decree their payment has been provided for, but that the defendants have not ceased the litigation and propose by appeal, a bill of review, or otherwise to further continue it.

That all of said intervening petitioners are deriving a common benefit from the services of your petitioner in behalf of the intervening petitioners, and that each of them ought to pay some reasonable compensation for such services.

And your petitioner files herewith the written consent of the large proportion in value and number of said intervening petitioners that twenty-five per cent. of the sums allowed them may be allowed your petitioner as his reasonable fee in their behalf.

Wherefore your petitioner prays your honors that such a per cent. upon each of said claims be allowed him as may be a just compensation for his services to said intervening petitioners, and that the same be ordered to be paid out of their several dividends, and that his rights be fully protected as to any settlements which have been or may hereafter be made.

227 And your petitioner will ever pray, &c.

HORACE SPEED.

And afterwards, to wit, on the 12th day of March, 1883, at the November term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective counsel, and Horace Speed, of counsel for the intervening petitioners, moves the court to sustain their exceptions to the master's report herein; and the court, having heard the evidence and the report and the arguments of counsel thereon, and having maturely considered the same, does now sustain said exceptions and does, except so far as said exceptions affect it, sustain and approve said report; and the counsel for the original complainants and the counsel for the intervening petitioners herein now move the court for decrees in their favor upon reports, pleadings, and evidence in this cause.

And the court, having heard the arguments of counsel thereon and having maturely considered the pleadings, evidence, and reports herein, now finds that the equities of the case are with said complainants and petitioners, and that there is due to them the following sums set opposite their respective names, to wit:

William Smith & Co.	2,489 84
Freund & Co.	982 44
L. & M. Kahn	2,525 48
228 David Untermeier	1,751 41
Middletown Plate Co.	839 80
Wilcox Silver Plate Co.	103 01
Henry G. Reed *et al.*	673 76
Rogers, Smith & Co.	348 47
C. G. Alford and Co.	657 34
James F. Angell	190 85

Chester, Manchester & Co.	22	72
Duhme & Co.	473	42
Hagstoz & Thorpe	80	75
Juergeus & Anderson	111	33
Lessauer & Sondheim	466	67
Albert Lorsch	129	25
Noah Mitchell	137	13
N. Y. Morocco Case Co.	25	93
Pforzheimer & Keller	771	52
Rest Fenner Smith & Co.	330	18
Simpson, Hall, Miller & Co.	471	61
D. S. Spaulding	100	65
Spies and Rossweg	65	50
Stanley Bros.	111	90
John W. Steele (Brainard & Steele)	25	50
Stern, Bros. & Co.	604	71
R. Wallace & Sons' M'f'g Co.	264	18
Simons, Bros. & Co.	489	51
Sinnock & Shirrell	624	41
Adolph Goldsmith	507	86
Meriden Cutlery Co.	102	23
L. Hammel & Co.	21	35
Joseph Fahys	207	01
H. Elcox & Co.	336	26
229 Aiken, Lambert & Co.	175	00
Baldwin, Sexton & Peterson	190	77
Samuel Eichberg	952	80
Making in all the sum of	$18,362	54

The respective sums aforesaid being the principal sums respectively due, with interest thereon from and after the expiration of four months from the accruing of the respective items of indebtedness.

That said complainants and petitioners are entitled to decrees for said sums, respectively, and to a priority of payment over said defendant, Francis M. Churchman, surviving partner, &c.; that the sale by Craft to his co-respondents was fraudulent and void as to his creditors, and that the value of the goods so transferred was twenty thousand dollars, as found in the interlocutory decree, which exceeded the sums required for the payment of the claims of the original complainants and the petitioners herein.

Wherefore it is now ordered, adjudged, and decreed that said sale be annulled and set aside as fraudulent and void as to creditors, and the respondent Churchman, the surviving partner of the firm of S. A. Fletcher & Co., and said Craft be, and are held and decreed to be, trustees for said complainants and petitioners for the sum of $20,000, or so much thereof as may be required to pay the claims as above set out.

230 And that said Craft and Churchman be required to pay into the registry of this court within sixty (60) days said

amounts, aggregating eighteen thousand three hundred and sixty-two dollars and fifty-four cents, and the costs of this suit, taxed at $—.

And the court having considered the petition of Horace Speed, counsel for some of the intervening petitioners herein, heretofore filed in this cause, asking an allowance for fees as against intervening petitioners not represented by him, now finds that the allowance should be made him as against intervening petitioners not represented by him, but who derive a common benefit from the litigation prosecuted by him on behalf of said intervening petitioners.

It is therefore ordered that the clerk of this court do reserve from the shares of such intervening petitioners not represented by said Speed twenty-five (25) per cent. of the amounts payable to them, respectively, and pay the sums so reserved to Horace Speed for his said services.

And thereupon said Francis M. Churchman, by his counsel, tenders his petition for a rehearing of this cause, and asks leave to file the same, which leave is granted, and said petition is filed. Said petition and the exhibits filed therewith read as follows, to wit:

231 To the honorable the judges of said circuit court:

The petition of said Francis M. Churchman, defendant in said cause, respectfully showeth—

That on the 27th day of June, A. D. 1881, the complainants in the above-entitled cause exhibited their bill of complaint in this court against the above-named defendants, William H. Craft and Francis M. Churchman and one Stoughton A. Fletcher, then in life, but since deceased, and which bill stated—

That on or about the 22d day of April, 1879, said defendant, William H. Craft, was engaged in business in the city of Indianapolis, Indiana, and for a long time prior thereto had been so engaged, as a merchant, dealing, in his own name, in gold and silver ware and jewelry, and having as such merchant good standing and credit with said complainants and among merchants in the city of New York and other places, and making purchases on credit from said complainants and other merchants in virtue of such standing and credit.

That at divers times during the latter part of the year 1878, and up to a date in March, 1879, but a few weeks previous to said 22d day of April, 1879, said Craft bought of the several firms and corporations, which the said complainants constituted, goods and merchandise in various amounts and on various credits respectively given by said several firms and corporations, which were induced to make such sales and to extend such credits either by the representations of said Craft, made at the times of said several purchases, that he was in good financial condition and able to pay all his debts at maturity, which representations were believed and relied upon as true by said firms and corporations, or by their reliance upon the good faith and known credit of said Craft; that said several credits were either in the form of open accounts or were evidenced by the notes of said Craft; that none of said notes and accounts had ever

been paid, although the payment thereof and of each of them had often been requested; that prior to the purchases above referred to the said Craft had frequently bought goods of each of said firms on like terms and had paid for such goods.

That previously to the exhibiting of said bill the said com-
232 plainants had taken judgments in divers amounts and at different times on said several notes and accounts due their respective firms and said corporations, and executions had been duly issued on said judgments, and the sheriff to whom said several executions had been directed made return thereon of "*nulla bona*," and that all of said judgments remained in full force, unpaid and unsatisfied.

That on or about the 22d day of April, 1879, said Craft, *who* was then, and for a long time prior thereto had been, utterly and hopelessly insolvent and unable to pay his debts, as he, said Craft, and said Francis M. Churchman and said Stoughton A. Fletcher (the then partner of said Churchman) then and for a long time before that well knew, and which fact they had not nor had either of them made known to said complainants, but they concealed the same from said complainants and from the other creditors of said Craft; that at said time said Craft made a pretended sale of his stock in trade, including the goods and merchandise sold him as aforesaid by said complainants to said Fletcher and Churchman, who were then partners in business under the name of S. A. Fletcher & Co., in payment of a pretended debt to a large amount, to wit, $30,000, alleged to be due by him to them; that after said pretended sale said Craft continued in possession of said goods and made sale thereof, aggregating a large sum, to wit, $20,000, and applied part of the proceeds to his own use and part to the use of the said Fletcher and Churchman with their consent and at their request.

That said Craft and said Fletcher & Churchman and each of them knew, at the various times of said purchases by said Craft and of said pretended sale, that said Craft was utterly and hopelessly insolvent and unable to pay his debts, and that said purchases and others were being made by said Craft in greater quantities than his trade justified or required under misrepresentations as to Craft's financial condition, as hereinbefore mentioned, and like misrepresentations made by said Craft and under misapprehensions of said complainants and other vendors, as hereinbefore mentioned, as to said Craft's financial condition.

That said complainants were informed and believed, and therefore so charged the truth to be, that said pretended sale to said Fletcher and Churchman was without consideration and was effected by said defendants with the intent to hinder, delay, and defraud said complainants and other creditors of said Craft, and that if any claim or debt was due and owing from said Craft to said Fletcher and Churchman or either of them the same was kept secret and concealed by them from said complainants and others with the intent that said Craft should have and retain credit, as hereinbefore mentioned, and that he should make purchases, as hereinbefore

referred to, and that such goods so purchased should be turned over in payment of such debt, if any there was.

That said bill prayed that said sale so made by said Craft to said Fletcher and Churchman be adjudged and declared null and void as to said complainants; that said Craft and said Fletcher and Churchman be decreed to be trustees for said complainants and be required to account for the proceeds of said goods and stock in trade included in said pretended sale so far as might be necessary to pay the claims of said complainants.

That said William H. Craft appeared to the said bill and put in his answer thereto, wherein he admitted that on April 17th, 1879, he was a merchant engaged in business in said city of Indianapolis and had so been for many years prior thereto; that at
233 said date and for some time prior thereto he was indebted to the several persons named in the said bill and to others, among whom was the firm of S. A. Fletcher & Co., which was composed of said Stoughton A. Fletcher and Francis M. Churchman; that when said complainants, respectively, gave credit to him they each knew that he was largely indebted to said Fletcher and Churchman and that said indebtedness was of longer standing than the debt held by either of said complainants; that on the — day of April, 1879, he did sell all his stock of goods, wares, and merchandise, including the fixtures and lease of his store-room, to the said Fletcher and Churchman; that prior to said sale said Fletcher and Churchman were urging the payment of their claims and threatened to sue and collect the same by legal process unless they were paid at once or secured; that said Fletcher and Churchman indebtedness was largely in excess of the value of the property included in said sale; that, to prevent the sacrifice of said property at public auction and for the purpose of paying said debt to said Fletcher and Churchman, he offered to sell to them all the said property in consideration of the surrender by them to him of the promissory notes made by him to them, which they then held and which were wholly unpaid, two of said notes being for $12,500 each and one of said notes being for $7,313.19 and all being long since past due, and said proposition was accepted by said Fletcher and Churchman, and that on the — day of April, 1879, said sale was made and consummated and said notes were surrendered to said Craft and he was released from all liability to said Fletcher and Churchman and they took possession of said property.

That there was no fraud, concealment, or collusion to defraud contemplated or intended by said sale on the part of himself, and that he did not know of any such intention on the part of said Fletcher and Churchman.

And said Craft in said answer denied that said sale was without consideration; that he secured any part of the proceeds of said property after it was sold by said Fletcher and Churchman or at any other time; that there was any intention to defraud his creditors by said sale, or that he ever made any of the representations charged in the bill to have been made by him, or that he retained possession and control of said property after said sale.

That your petitioner, Francis M. Churchman, and the said Stough-

ton A. Fletcher, of whom said Churchman is the surviving partner, also appeared to the said bill and put in their answer thereto, wherein they stated that they had no information or knowledge that said Craft was indebted to the several firms and corporations composed of the several complainants or of the manner in which any such indebtedness was created or what representations said Craft may have made in obtaining said goods or indebtedness, nor had they any information or knowledge of any judgments held by said complainants against said Craft, as set out in said bill.

That on the 27th day of December, 1878, said Craft was indebted to them in the sum of $25,000.00, evidenced by his two notes, one for $12,500.00, payable in thirty days, and one for $12,500.00, payable in sixty days, both of said notes having been given on said 27th day of December, 1878, for borrowed money, and also, on the 20th day of February, 1879, for one other note, dated the — day of August, 1879, payable in eighteen months, for about $7,313.00, which note was given by said Craft as the last payment for a stock of goods, and said note was taken up by them at said Craft's request, and
234 said stock of goods was put by said Craft in his general stock in trade and it constituted a part of the stock which said Craft sold to said Fletcher and Churchman.

That all of said notes matured and said Craft failed to pay the same or either of them, and at the instance of said Fletcher and Churchman said Craft took an invoice of his stock of goods, safes, and fixtures, and said inventory showed not more than enough property to pay the debt due the said Fletcher and Churchman, and they thereupon insisted upon the payment of their debt, and on the 5th day of April, 1879, and after said inventory had been made, said Craft sold them his entire stock in trade in full payment of his indebtedness to them, and they surrendered to him said three notes and immediately took possession of said stock of goods and had the lease of the store-room occupied by said Craft assigned to them, and they proceeded to sell out said stock of goods, and finally sold all of them; and they denied that said stock of goods remained in possession of said Craft after the said sale, but they averred that they employed said Craft at $150 per month to assist in making sale of said goods, and he continued in their employment about seven months, and they deny that he received any part of the proceeds of the sale of said goods after the sale to them of April 5th, 1879.

That they denied that said sale was without consideration or that there was any fraud or fraudulent intent on the part of Craft or of them to cheat, hinder, or delay the creditors of said Craft, but said sale was made in good faith, with the view and intent to pay an honest debt; and they denied that they kept their debt secret, and they said that complainants never called upon them to state whether Craft owed them, and they denied that they kept the indebtedness a secret so that Craft could purchase of said complainants on credit and pay the said Fletcher and Churchman.

That the said answer of the said Craft was duly verified by him, and the answer of the said Fletcher and Churchman was duly verified by said Francis M. Churchman, as one of the respondents therein.

That the answer of the said Craft and the answer of the said Fletcher and Churchman having been replied to, said cause was referred to William P. Fishback, Esq., as master, to take the evidence and report the same, with his conclusions.

That, having taken the evidence, said master, on the 15th day of April, 1882, filed his report of the same and his conclusions thereon, accompanied by the evidence heard by him; that in said report said master found that said sale to said Fletcher and Churchman was valid, and that the evidence did not establish a fraudulent intent. A copy of said report and accompanying evidence is filed herewith, marked "Exhibit A," and is prayed to be taken and considered a part of this petition.

That after the filing of said master's report, to wit, on the 20th day of April, 1882, the said complainants filed their exceptions to said master's report, which were and are as follows:

First exception. For that said master has not reported that at the time of the loan by Fletcher & Co. to Craft and at divers times thereafter it was secretly agreed between said defendants that if at any time said Craft should become insolvent he would prefer said Fletcher & Co. over his other creditors, and that said sale was made pursuant to such prior agreement.

235 Second exception. For that the said master has not reported that the bill of sale made by Craft to Fletcher & Co. expressly stated and conclusively showed that part of the consideration of said sale was that Fletcher & Co. should employ said Craft thereafter "in the carrying on of that business at $150 per month so long as said Churchman shall carry on or continue said business."

Third exception. For that the said master has not found that the making and the execution of the secret agreement, that if Craft became insolvent he would prefer said Fletcher & Co., was a fraud upon his other creditors.

Fourth exception. For that the said master has not found that the sale was rendered fraudulent and void as to creditors by the provision therein, as part of the consideration, that said Craft should be employed by said Fletcher & Co. at $150 per month, as therein provided.

Fifth exception. For that the said master has found that the evidence does not establish fraudulent intent, whereas he should have found that the bill was sustained by the evidence and that the complainants were entitled to a decree in accordance with the prayer of their bill.

Sixth exception. For that the said master has not found that Craft after said sale did, in fact, remain in possession of said goods; that this was *prima facie* fraudulent, and that the burden of proof was upon the defendants to show the transaction to be fair, and that the defendants had failed to make such proof.

That thereafter, at divers times, intervening petitions of divers creditors of said William H. Craft, by leave of court, were filed setting up claims due such creditors from said Craft.

That afterwards, on the 16th day of August, 1882, the exceptions

of the complainants to said master's report were sustained, and the court found as follows:

"That said exceptions are well taken and are sustained, and that the equity of said cause is with the complainants, and that there is due the complainants, William Smith, John Smith, and Otto Linz, partners, $2,060.58, two thousand sixty and $\frac{58}{100}$ dollars, with interest thereon at six per cent. per annum from September 18, 1879, and to Max Freund and Adolph, partners, eighteen hundred and thirteen dollars and nine cents, with interest thereon from September 18, 1879, and to Louis and Moses Kahn, partners, two thousand one hundred and twenty-two dollars and twenty-six cents, with interest thereon from January 8, 1880, and to David Untermeier, one thousand five hundred and eighty-five dollars, with interest thereon from June 9, 1881, and to the Middleton Plate Company seven hundred and sixty dollars, with interest thereon from June 9, 1881.

"That the plaintiffs are entitled to a decree for the amounts so found due them, respectively, and to a priority of payment; that the sale from the respondent Craft to his co-respondents, Fletcher and Churchman, was fraudulent and void, and that the goods so transferred exceeded in value the aggregate amount of the debts herein found to be due the complainants.

"And it is ordered by the court that the remaining matters in issue herein between the intervening petitioners, who have been made parties plaintiff, be referred to the master, who will take testimony and report to the court with all proper speed the amount due each said intervening petitioner—now complainant—and
236 other creditors who may file their claims and become parties hereto within thirty days from this date.

"And it is now agreed between the respondents and all creditors who have been allowed to intervene herein, and is found by the court for the purpose of distribution, that the cash value of the goods transferred by Craft to Fletcher and Churchman was the sum of $20,000.00, and that the amount due to Fletcher and Churchman from Craft was the two notes for $12,500.00 each, and the amount paid on the McGinnis note, $8,085.35, with six per cent. interest from February 17, 1879.

"But the above reference to the master and the proceedings thereunder are not to affect or prejudice the rights of the complainants to the original bill herein, the bill remaining as to them a bill on behalf of themselves only."

That under said reference said master took the testimony therein referred to, and on the 30th day of October, 1882, filed his report of the same, showing the various sums due the several intervening petitioners, none of which several sums due to any of said petitioners, as individuals or as partners, was $5,000.00, and that the total amount of debts found to be due from said Craft to said complainants and said intervening petitioners was $—.

And your petitioner prays that the court will refer to said report and accompanying evidence, and that the same may be considered the same as if herein fully set out.

That after the filing of said last-named master's report said intervening petitioners filed their exceptions to said report.

That afterwards, on the — day of ——, 1883, and in the November term, 1882, of said court, the court announced its decision in respect of all the matters in issue in said cause, and a draft of the final decree in said cause has been prepared and submitted to counsel, but the same has not been spread of record in the order-book of the said court. A copy of said draft of final decree is filed herewith, marked "Exhibit B," and is prayed to be taken and considered as a part of this petition.

That your petitioner finds himself much aggrieved by said finding, decision, and decretal order, and your petitioner submits that so much of the said finding and decree is erroneous as finds that the sale of his stock of goods by the said defendant Craft to the said Fletcher and Churchman of April 5th, 1879, was fraudulent and void as against the creditors of said Craft.

And your petitioner further submits that said finding and decree is erroneous, and that he is aggrieved thereby in this: That the said sale of goods by said Craft to said Fletcher and Churchman, if fraudulent at all, was so constructively only, and not actually fraudulent. The said Churchman, as surviving partner, should have been allowed to retain so much of the proceeds of the sale of said goods as had been received by him and applied on his said debt prior to the filing of said bill of complaint, whereas by said decree he is required to pay all said proceeds of sale into court for the use and benefit of said other creditors, as hereinabove shown.

And your petitioner further submits that so much of the said finding and decree is erroneous as finds and orders that said Fletcher and Churchman, or said Churchman as surviving partner, were not and is not entitled and had and has no right to be allowed
237 to come in and be allowed to participate with said original complainants as creditors or as a creditor.

And your petitioner further submits that so much of the said finding and decree is erroneous as finds that the debt due by said Craft to your petitioner, as surviving partner, should be and shall be postponed to said intervening plaintiffs, and that said interveners should all be paid in full before allowing your petitioner to retain any of said fund on account of the debt of said Craft due to him as surviving partner.

And your petitioner further shows that he cannot have and take an appeal in said cause for the reason that of all the various amounts due said complainants and interveners no single debt or claim held by any of said complainants or interveners is of the amount of $5,000.00 or over, but all of said claims and debts are severally for sums less than $5,000.00.

Wherefore your petitioner prays that your honors will be pleased to grant a rehearing of this cause before your honors, your petitioner submitting to pay such costs as the court shall award in case his complaint shall be found groundless, and that pending the hearing of this petition your honors will stay the execution of said decree in such manner and upon such terms as may appear just.

And your petitioner will ever pray, etc.

FRANCIS M. CHURCHMAN,
Surviving Partner,
By RAND & WINTERS AND
BAKER, HORD & HENDRICKS,
His Solicitors.

We certify that we have examined the case referred to in the foregoing petition, and are of opinion that the decretal order therein mentioned is erroneous in the particulars specified in said petition.

Indianapolis, March, 1883.

A. W. HENDRICKS,
E. DANIELS,
Of Counsel.

238 And afterwards, to wit, on the 9th day of April, 1883, at the November term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Mess. Rooker and Hatch, and file their petition herein in the words following, to wit:

To the Hon. Walter Q. Gresham, judge of said court:

Your petitioners, Calvin F. Rooker and A. W. Hatch, partners in the practice of law under the name and style of Rooker and Hatch, would show to the court that they, together with Horace Speed, represented the plaintiffs in the bringing and prosecution of the above-entitled cause under an agreement that the fees in the cause should be equally divided between petitioners' firm and said Speed; that after the final determination of the cause and before the entering of the decree there arose a difference between petitioners and said Speed as to the division of the fees, and particularly as to the division of the counsel fee allowed by the court to be paid from the fund; that by the suggestion of this court the parties agreed to submit the matter to the Hon. A. C. Harris and allow him to decide how the said fee should be divided and what the rights of the parties were in the premises; that in pursuance of said agreement the parties appeared before said Harris and made their statements and
239 submitted the matter to him for determination; that said Harris, after such hearing, found and decided that said fee should and ought to be divided equally between petitioners and said Speed; that after said Speed was informed of the decision of said Harris and before petitioners were informed what said decision was said Speed, without the knowledge or consent of petitioners, procured a decree to be entered allowing all of said fee to him, said Speed, and making no provision for the payment of any portion of the same to petitioners.

Wherefore petitioners ask that the court order that said decree be so amended that petitioners be allowed one-half of said fee; that a supplemental order be entered ordering and directing that no part of said counsel fee so allowed by the decree in this cause be paid by

the clerk to said Speed until the petition shall be finally acted upon, and petitioners ask for all other proper relief.

CALVIN F. ROOKER.
A. W. HATCH.

R. O. HAWKINS,
Att'y for Rooker & Hatch.

And afterwards, to wit, on the 1st day of May, 1883, at the May term of said court, before the Honorable Thomas Drummond, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

240 Come now the complainants, by Horace Speed, Esq., their solicitor, and move the court to strike out the defendants' petitions for a rehearing in the above-entitled cause.

241 And afterwards, to wit, on the 11th day of May, 1883, at the May term of said court, before the Honorable John M. Harlan, justice, and William A. Woods, judge, as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now come the parties, the original complainants, the intervening petitioners, and the defendants, and pursuant to agreement made in open court it is ordered that this cause be set down for hearing before his honor Judge Woods at such time as may be fixed by him, and that such hearing by him be of the original cause *de novo* upon the bill, answers, replications, master's reports, and all evidence heard by the master and filed with his reports and of record or on file in this cause, and all agreements and admissions of record in the cause and exceptions filed to the master's reports.

It is further ordered by the court that the time for the payment into court by the defendants of the money ordered to be paid into court by the decree in this cause of March 12th, 1883, be extended until the final decree be rendered: Provided, That the defendants shall execute within three days from this date their bond in a penalty in double the amount required to be paid into court by said

242 decree of March 12th, 1883, with sureties, to be approved by the clerk of this court, and payable to the complainants and intervening petitioners herein, conditioned that the defendants shall fully pay and perform any final decree that shall be rendered in this cause according to the terms of said decree.

And now come said defendants and file their bond in the penalty and upon the condition above prescribed, with Stoughton J. Fletcher, surety, which is approved by the clerk of the court and is as follows, to wit:

Know all men by these presents that the undersigned, Francis M. Churchman, surviving partner of Fletcher and Churchman, and William H. Craft, defendants in the above-entitled cause, as principals, and Stoughton J. Fletcher, as surety, are held and firmly bound unto the original complainants and all intervening complainants in the above-entitled cause who are named in the final decree

entered in said cause March 12th, 1883, in the penal sum of thirty-eight thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our executors and adminstrators, joint- and severally, firmly by these presents.

The condition of the above obligation is as follows: Whereas, by the decree made in the above-entitled cause of the date of March, 12th, 1883, the defendants in said cause were required to pay into court within 60 days from said date, for the use of the original
243 complainants and intervening complainants in said cause, whose names are set out in said decree, certain specified sums of money to each of said original and intervening complainants so named; and whereas said defendants thereupon filed in said cause a petition for rehearing, which has now, by order of the court, been set down for hearing before his honor Judge Woods; and whereas the court, pending the hearing of such petition for a rehearing, has ordered that the time for paying into court the money required to be paid by said decree, shall be extended until a final decree be made upon said petition for a rehearing upon condition that said defendants give bond in a penalty double the amount of the aggregate of the sums of money required to be paid by said decree of March 12th, 1883, conditioned that said defendants will fully pay and perform whatever they may be required to pay and perform by the final decree which shall be rendered upon such petition for rehearing:

Now, therefore, if the said defendants, Francis M. Churchman and William H. Craft, shall well and truly pay and perform whatsoever they may be required to pay and perform*ed* by the final decree which may be rendered in this cause upon the said petition for a rehearing in all respects according to the terms of said final decree, then and in that case this obligation shall be null and void; otherwise to be in full force and effect.

244 In witness whereof the said Francis M. Churchman, William H. Craft, and Stoughton J. Fletcher have hereunto set their hands and seals this 11th day of May, 1883.

FRANCIS M. CHURCHMAN, [SEAL.]
Surviving Partner.
WILLIAM H. CRAFT. [SEAL.]
STOUGHTON J. FLETCHER, *Surety.*

Approved by me—
NOBLE C. BUTLER, *Clerk.*

245 And afterwards, to wit, on the 17th day of September, 1883, at the May term of said court, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and file their petition for leave to amend their bill of complaint herein, and said petition is in the words following, to wit:

The complainants pray leave to amend their bill of complaint in this cause by inserting therein (at end of paragraph ending with

the word "defendants," at page 5 of printed record, p. 5 of original written bill) the words following, to wit:

"That said sale was fraudulent and void as to creditors of said Craft, and was made and contrived with intent to cheat, hinder, and defraud them in this: That said sale was not a simple sale for the purpose of paying his debts, but a part of the motive and consideration for said sale was that Fletcher and Churchman should thereafter employ said Craft in said business at $150 per month so long as said Fletcher and Churchman should carry on or continue said business, and for the further reason that at the time said Fletcher and Churchman made the loans or pretended loans to said Craft there was an understanding and agreement as part of the
246 contract of loan that if at any time thereafter anything occurred by which he was not able to pay all his debts he would first secure or prefer the said Fletcher and Churchman."

That such facts clearly appear by the record, and complainants' counsel thought they were covered by the allegations of the bill, but to conform the pleadings to the undisputed evidence beyond question complainants now ask that the bill may be amended as above.

HORACE SPEED,
Of Counsel for Complainants.

And afterwards, to wit, on the 26th day of September, 1883, at the May term of said court, before the Honorable Thomas Drummond and William A. Woods, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause coming on to be heard before the Honorable William A. Woods, district judge, upon the petition for a rehearing filed herein under the order of court of May 11th, 1883, and the same having been heard and fully considered—

It is ordered that said petition be granted and that this cause be reheard *de novo* upon the bill, the answer, the replication, the evidence, the master's reports, and the exceptions thereto, and that the interlocutory and final decrees entered herein, dated June 9th, 1882, August 16th, 1882, and March 12th, 1883, be in all
247 things set aside and vacated, and plaintiffs now amend their bill by leave of court, which amendment is now filed as follows, to wit:

Amendments to the Bill of Complaint Herein Upon Leave of Court First Had and Obtained.

1. Insert at the end of the paragraph ending with the word "defendants," at page 5 of printed record (page 5 of original written bill), the words, "That said sale was fraudulent and void as to creditors of said Craft, and was made and contrived with intent to cheat, hinder, and defraud them in this: That said sale was not a simple sale for the purpose of paying his debts, but that a part of the motive and consideration for said sale was that Fletcher & Churchman should thereafter employ said Craft in said business at $150 per month so long as said Fletcher and Churchman should carry

on or continue said business, and for the further reason that at the time said Fletcher and Churchman made the loans or pretended loans to said Craft there was an understanding and agreement as part of the contract of loan that if at any time thereafter anything occurred by which he was not able to pay all his debts he would first secure or prefer the said Fletcher and Churchman."

WILLIAM SMITH ET AL.,
By HORACE SPEED, *Their Solicitor.*

BENJAMIN HARRISON, *Of Counsel.*

248 And the defendants, William H. Craft and Francis M. Churchman, now file their separate answers to said amendment as follows, to wit:

The separate answer of William H. Craft, one of the defendants to the above bill of complaint, to the amendments made to said bill by the complainants, as heretofore entered and filed by leave of court.

The said William H. Craft, affirming all that he hath heretofore answered to the original bill to be true, for answer to the said amendments, or to so much thereof as he is advised it is material to answer, answering, says—

That he denies that the sale made by him to Francis M. Churchman for the use and benefit of Fletcher's Bank, mentioned in said bill of complaint and referred to in said amendments, was fraudulent and void as to his other creditors, or that the same was made to cheat, hinder, or defraud his said other creditors or any of them, but says that the sale was made in good faith and for a good and valuable consideration, and that said sale was made for the sole purpose of paying the just and honest debt owed by him to the said bank for borrowed money, which he had received from said bank at divers times at his own instance and request and for his own use and benefit, and which money had been expended by him in
249 the purchase of new goods with which to replenish his stock and in the payment of debts contracted by him with his various creditors in the purchase of goods and wares used for replenishing his said stock.

And defendant further says that the further consideration mentioned in said bill of sale by which he, Craft, became employed in and about the business of the said bank at the rate of $150 per month in the disposal of the said stock of jewelry did not enter into nor form any part of the consideration of said sale, but was simply a fair and no more than an adequate consideration to him for his services so rendered as aforesaid, and said employment was made in good faith and without intent to defraud, cheat, injure, or affect in any way or manner the rights of any of the other creditors; and defendant further says that he considered his services worth $150 per month, and he would have demanded that amount in return therefor had he in no way been connected with said sale to said bank.

Defendant further says that upon the sale and transfer of said stock of jewelry by him, Craft, to the said Churchman for the said bank all his right, title, and interest therein passed from him to said Churchman for said bank, and thereafter he had no right, title, or interest, contingent or otherwise, directly or indirectly, in said stock of jewelry or the lease mentioned in said bill
250 of sale or in the proceeds or profits thereof.

Defendant further says that said sale was a simple sale for the purpose of paying his debts contracted with said bank, and expressly denies that there was any other motive or object therefor but for the said payment of said debt, and denies that he realized therefor more than the amount of said indebtedness; and further now says that by said arrangement he paid a larger amount of his said indebtedness than he could have done by any other de-position of his property.

Defendant further says that he expressly denies that there was any understanding or agreement between himself, Craft, and the said Churchman, representing the said bank, which formed any part of the consideration for said loans by which he, Craft, became indebted to the said bank for moneys loaned him by said bank, and which constituted the indebtedness of Craft to said bank, which was the consideration for said sale aforesaid; but defendant says that said loans were made in good faith, and at the time of contracting said loan he believed himself to be solvent, and he enjoyed good credit and was looked upon as a prosperous business man and one in no way embarrassed.

That no promises were made by him to said Churchman
251 that if anything occurred thereafter by which he was not able to pay his debts he would first secure or prefer the said bank, nor any suggestion or agreement to that effect which entered into and formed part of the consideration for said loans.

For further answer to said amendments to said bill of complaint defendant says that if any matter or thing therein contained hath not been specially answered the same is hereby and herein specifically denied.

Wherefore the defendant prays to be hence dismissed with his reasonable costs.

McDONALD, BUTLER AND MASON,
Atty's for Deft's.

STATE OF INDIANA, *Marion County:*

William H. Craft, being first duly sworn, upon oath says that he has read the foregoing answer, and that the matters and things therein set forth are true.

W. H. CRAFT.

Subscribed and sworn to before me this 15th day of November, 1883.

[SEAL.] GEO. W. WOODS,
Notary Public.

And the separate answer of said defendant, Francis M. Churchman, is in the words following, to wit:

The separate answer of Francis M. Churchman, one of the de-
252 fendants to the above bill of complaint, to the amendments made to said bill by the complainants, as heretofore entered and filed by leave of court.

The said Francis M. Churchman, affirming all that he hath heretofore answered to the original bill to be true, for answer to the said amendments, or to so much thereof as he is advised it is material to answer, answering, says—

That he denies that the sale made by the said defendant, Craft, to this defendant for the use and benefit of Fletcher's Bank, mentioned in said bill of complaint and referred to in said amendments, was fraudulent and void as to the creditors of the said Craft, or that the same was made with the intent to cheat, hinder, and defraud the said creditors or any of them.

Said defendant expressly denies that said sale was made for any other purpose, or with any other intent than of paying the debt which the said Craft justly owed to the said bank, all of which was for borrowed money or money paid out and expended by the said bank at the instance and request of the said Craft and for his use and benefit, and that the further consideration mentioned in said bill of sale, by which the said Craft became employed in and about the business of the bank at the rate of $150 per month in the
253 disposal of the said stock of jewelry, did not enter into or form any part of the consideration of said sale, but was simply a fair, and no more than adequate, consideration to the said Craft for his services so rendered as aforesaid, and said employment was made in good faith and without any intent whatever to in any manner affect the rights of any of the other creditors.

And said defendant expressly denies that the said Craft had any interest, contingent or otherwise, directly or indirectly, in said stock of jewelry or the lease mentioned in said bill of sale, and by which the same was sold and disposed of to the said Churchman for the use and benefit of said bank, or in the proceeds thereof.

The said Churchman, further answering, says that he expressly denies that there was any understanding or agreement between him, the said Churchman, representing the bank, and the said Craft that formed any part of the contracts of loans by which the said Craft became indebted to the said bank for moneys borrowed from time to time by him, and which constituted the indebtedness in a great part which Craft owed to the said bank at the time of said sale.

That at the time said Craft was contracting said loans and receiving said money from said bank he, the said Churchman,
254 who was at that time and still is acting as the business manager of the affairs of said bank, had every reason to believe that said Craft was entirely solvent; that he had the appearance of being a prosperous business man and enjoying a good credit; but, inasmuch as the loans were increasing in amount and were made upon the individual paper of the said Craft, the said Churchman

felt it his duty to suggest that in the vicissitudes of trade Craft might become embarrassed and that he should expect that Craft would see that his indebtedness to the bank was fully paid or provided for in the event of any reverses in business which might render him unable to pay his entire indebtedness, and the suggestions were readily assented to by the said Craft, but they formed no part of the consideration of the loans, nor did he depend on them any further than the good faith that he felt was due from Craft to the bank in thus obtaining credit from it.

That he had no knowledge, nor did the bank, of the state or condition of Craft's indebtedness to the complainants or any other creditors; nor did he have any purpose or intent, as representing the bank, to perpetrate any fraud of any kind or any description upon such creditors, nor was any fraud at any time practiced upon them by him. On the contrary, he has reason to believe, and does
255 believe, that much of the money which was received by Craft from the bank was paid to these Eastern creditors, by which his debts to them were greatly reduced.

For further answer to said amendments to said bill of complaint defendant, said Francis M. Churchman, says that if any matter or thing therein contained hath not been specially answered the same is hereby and herein specifically denied.

Wherefore the defendant prays to be hence dismissed with his reasonable costs.

McDONALD, BUTLER AND MASON,
Att'ys for Defendants.

STATE OF INDIANA, *Marion County:*

Francis M. Churchman, being first duly sworn, upon oath says that he has read the foregoing answer, and that the matters and things therein set forth are true.

FRANCIS M. CHURCHMAN.

Subscribed and sworn to before me this 15th day of November, 1883.

[SEAL.] GEO. W. WOODS,
Notary Public.

And the plaintiff now files his replication thereto as follows, to wit:

Replication of the complainants and intervening petitioners to the amendments to the answers of the defendants herein.

These repliants, saving and reserving to themselves all and
256 all manner of advantage of exception to the manifold insufficiencies of the said amendments to said answers, for replication thereto say that they will aver and prove the averments in their bill, amendments thereto, and the intervening petitions in this cause to be true, certain, and sufficient in law to be answered unto, and that the said amendments to said answers of said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the

said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as by and in their said bill, the amendments thereto, and the intervening petitions in this cause they have already prayed.

HORACE SPEED,
Sol'r for Complainants and Intervening Petitioners.

And this cause now coming on for hearing upon the bill and amendments thereto, answer, replication, evidence, master's reports, and exceptions thereto, the same is submitted to the court.

And afterwards, to wit, on the 27th day of February, 1884, before the Honorable Thomas Drummond and William A. Woods,
257 judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause coming on to be finally heard, the Honorable Thomas Drummond, circuit judge, and the Honorable William A. Woods, district judge, sitting herein, and being argued by counsel and considered by the court, and the court, being sufficiently advised in the premises, doth find, upon the pleadings and the proofs adduced, that the equity of the cause is with the defendants, and that the complainants' bill ought to be dismissed.

And it is thereupon ordered, adjudged, and decreed by the court that the bill of complaint herein be, and the same is hereby, dismissed for want of equity, and that the defendants recover of the complainants their costs and charges herein, taxed at $—.

All of which is finally ordered, adjudged, and decreed.

And the opinions of the judges being opposed upon questions which have occurred in the hearing of this cause they have, on motion of the complainants, by their solicitors, caused the points upon which they have so disagreed to be stated under their direction and certified, and such certificate is now ordered to be entered of record, and is in the words and figures following, to wit:

Be it remembered that on the hearing of this cause the fol-
258 lowing facts were found by the court:

On the 5th day of April, 1879, William H. Craft, one of the defendants, was indebted to Fletcher and Churchman, under the firm name of S. A. Fletcher & Co., known as Fletcher's Bank, in about the sum of $33,000. He was also indebted to William Smith and others, complainants, and other Eastern creditors, in about the sum of $16,000. Craft had been for many years a dealer in watches and jewelry in the city of Indianapolis and had enjoyed good credit both at Indianapolis and in the Eastern cities among manufacturers and wholesale dealers. By an invoice taken about the date above named it became known to him that his entire assets amounted to about $33,000. The indebtedness to the bank of S. A. Fletcher and Co. was evidenced by two promissory notes of $12,500 each, dated December 27th, 1878, and due in thirty and sixty days, respectively, and one note of $7,313.19, dated August 17th, 1877, which, with ac-

crued interest, amounted to $8,085.35, payable to F. M. Churchman. The notes for $12,500 each were for money borrowed of the bank as follows, to wit:

In November, 1876	$7,000 00
" February, 1877	6,000 00
" August, 1877	2,500 00
" October, 1877	6,500 00

And other sums, making the total amount due in December,
259 1878, $25,000. The loans were made upon 90 days' time and ten per cent. annual interest deducted in advance at the time of the loan and of each renewal, the renewals having been regularly and promptly made every 90 days until December 28th, 1878, at which time some of the notes were over due. No further renewals were made. The note for $7,313.19 was executed August 17th, 1877, the money having been used by Craft in making the last payment on a stock of jewelry purchased by Craft at the date of the execution of said note. The debts owed by Craft to his Eastern creditors were for stock purchased from time to time for the purpose of replenishing his store, and his Eastern debts were about fifty thousand dollars in 1876, when he began to borrow money from the Fletcher Bank. At the time the notes for $12,500 each were given it was understood between Craft and the bank that Craft should not buy so heavily as he had been doing theretofore, and carry a less stock and apply his sales (as far as practicable) in reducing the debt to the bank. At that time Craft represented his stock as being worth $60,000.00. On the said 5th day of April, after completing his inventory and finding from it his inability to pay all his debts, he went to the office of Ritter and Ritter, attorneys, they being his legal advisers, to counsel with them in regard to his affairs, and thence sent for F. M. Churchman, the business manager of Fletcher's Bank, and made
260 known to Churchman his financial condition, intimating at the same time an intention to make an assignment for the benefit of his creditors. This was the first information that Churchman or the bank had of the insolvency of Craft.

Churchman reminded Craft of the many conversations they had had together, and that Craft had always said he would protect the bank if anything ever occurred by which he was not able to pay his debts. If he met with any losses or anything of the kind he would secure the bank if the bank would loan him the money from time to time. Craft said he had made these promises and believed he was solvent all the time and able to pay the bank, and intended to pay it and wanted to secure the bank debt.

Churchman then told him he did not know of but one way to do it, and that was for the bank to buy the stock. This Craft finally agreed to, and the following bill of sale was drawn up and signed by Craft:

"Whereas William H. Craft, of the city of Indianapolis, Marion county, State of Indiana, is indebted to Francis M. Churchman, of said city, in about the sum of thirty-one thousand dollars, evidenced by three certain promissory notes, dated, respectively, each December

27th, 1878, two for the sum of $12,500 each and the other for the sum of seven thou-nd three hundred and sixty-three dollars, due, respectively, in thirty and two in sixty days after date and
261 signed by W. H. Craft, now, in consideration of the full payment, satisfaction, and surrender of said indebtedness and notes, said Craft does hereby bargain, sell, and deliver to said Churchman all his stock of watches, diamonds, jewelry, silverware, fixtures, and property of every kind now owned and used by said Craft in his business at No. 24 East Washington street, in said city; also all the interest of said Craft in the lease held by him to said premises, and the further consideration that said Churchman shall employ said Craft in said business at the rate of one hundred and fifty dollars per month so long as said Churchman shall carry on or continue said business.

In witness whereof I have hereunto set my hand and seal this the 5th day of April, 1879.

WILLIAM H. CRAFT.

STATE OF INDIANA, *Marion County:*

Before me, B. W. Ritter, a notary public in and for the State and county aforesaid, William H. Craft subscribed and acknowledged the foregoing bill of sale this 5th day of April 1879.

B. W. RITTER,
Notary Public."

The complainants are merchants and manufacturers in Eastern cities, who had for many years dealt with the defendant Craft selling him goods on credit, and knew nothing of his indebtedness to the bank or of his promise to protect the bank in the manner
262 above found by the court, and continued to sell him goods on credit while he was so borrowing money. The original complainants in said suit are William Smith, John Smith, and Otto C. Linz, under the firm name of Wm. Smith and Co.; Max Freund and Adolph Freund, under the firm name of Max Freund and Co.; Louis Kahn and Moses Kahn, under the firm name of L. and M. Kahn; David Untermeier, and the Middletown Plate Co., and the amounts of their claims are as follows, to wit:

William Smith and Co.	$2,489 84
Freund and Co.	982 44
L. and M. Kahn	2,525 48
David Untermeier	1,751 41
And Middletown Plate Co.	839 80

William Smith & Co. took judgment September 18, 1879, in cause No. 25029, in the superior court of Marion county, Indiana, for $2,060.58, being for goods sold at different dates prior and down to March 12th, 1879. Execution was issued thereon September 30th, 1879, to the sheriff of said county, who, on the 17th day of March, 1870, made a return thereon of *nulla bona.*

L. and M. Kahn took judgment January 8th, 1880, in cause No. 25724, in said superior court, for $2,122.26, for goods sold at different

dates prior and down to February 8th, 1879. Execution was issued thereon June 13th, 1881, to said sheriff, who, on the 14th day of June, 1881, made return thereon of *nulla bona.*

263 Max Freund and Co. took judgment September 18th, 1879, in cause No. 25030, in said superior court, for $813.09, for goods sold at different dates prior and down to February 8th, 1879. Execution was issued thereon September 30th, 1879, to said sheriff, who, on the 17th day of March, 1880, made return thereon of *nulla bona.*

David Untermeier took judgment June 9, 1881, in cause No. 7196, on the law side of this court, for $585.00, for goods sold at different dates prior and down to March 26th, 1879. Execution was, on June 18th, 1881, issued thereon to the marshal of this court, who, on the 18th day of June, 1881, made return thereon of *nulla bona.*

The Middletown Plate Company took judgment June 9th, 1881, in cause No. 7198, on the law side of this court, for $760, for goods sold at different times prior to and including February 10th, 1879. Execution was issued thereon June 18th, 1881, to the marshal of this court, who, on the 18th day of June, 1881, made return thereon of *nulla bona.*

That all of said judgments are in full force, unpaid, and unsatisfied.

That upon the execution and delivered of the said bill of sale, which was for the use and benefit of the bank, the three notes above mentioned held by the bank were delivered up to the said Craft as paid and satisfied, and Churchman, for the bank, took possession

264 of the property, stock of jewelry, and lease mentioned in the bill of sale, and, with Craft as manager, carried on the said business, reducing the stock as rapidly as possible, with a view to closing it out, for about six months, when the balance of the stock was sold out at auction. The bank realized for the entire stock $20,000. Craft received, during the time he was so employed as manager, the sum of $150 per month, as stipulated in the said bill of sale, and had no interest, either directly or indirectly, except as appears by said bill of sale, in the stock of jewelry or the lease or in the proceeds of either after the date of said sale.

That upon the hearing of the said cause, before the Honorable Thomas Drummond, judge of the circuit court of the United States for the district of Indiana, and the Honorable William A. Woods, district judge of the United States for said district, sitting with the said circuit judge, it became a question—

First. Whether the understanding between the said Churchman, representing the said bank and the said Craft, that if the said bank would loan the said Craft money from time to time, and that if anything should occur by which he, the said Craft, was not able to pay his debts he would secure the bank, constituted a fraud upon the said Smith & Co. and other creditors named in the said bill of complaint so as to invalidate and render void the said sale of the

265 said stock of jewelry and the assignment of the lease so afterwards made to the said Churchman for the use of the said bank.

Second. Whether the "further consideration" mentioned in said bill of sale by which the said Craft was employed in said business for a compensation at the rate of $150 per month so long as the said Churchman for the said bank should continue or carry on said business was fraudulent as to the said Smith & Co. and the other creditors of the said Craft, and whether said stipulation vitiated and rendered void said sale made to the said Churchman for the said bank as to the said other creditors of the said Craft.

Third. Whether, as a conclusion of law from the above facts which are found by the court, the said sale by the said Craft to the said Churchman for the use of the said bank was and is fraudulent and void and made to Churchman for the bank with the intent to hinder or delay the said Smith & Co. and the other complaining creditors of the said Craft.

Upon each and all of the above questions the opinions of the said judges are and were opposed, and that the points upon which they so disagree may be ruled upon by the Supreme Court in pursuance of the statutes in such case made and provided the said judges have caused the above points upon which they have
266 disagreed and are so opposed to be stated under their direction, with the facts so found by them upon which the disagreement occurred, and that the same be certified and be made a part of the record in this cause, which is done accordingly.

THOMAS DRUMMOND.
WILLIAM A. WOODS.

And the complainants now pray an appeal to the Supreme Court, which is allowed on their filing their bond in the sum of $250, with surety, to be approved by the court.

And afterwards, to wit, at the May term of said court, on the 15th day of July, A. D. 1884, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and file their appeal bond herein in the sum of two hundred and fifty dollars ($250.00), with Wheelock P. Bingham as surety thereon, and said bond is approved by the court.

267 UNITED STATES OF AMERICA:

To William H. Craft, Stoughton A. Fletcher, and Francis Churchman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2d Monday of October next, pursuant to an appeal upon a certificate of division filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein William Smith and others are complainants on appeal and you are defendants on appeal, to show cause, if any there be, why the decree rendered against the said complainants on appeal, as in the said certificate of division mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court, this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal Circuit Court of the United States, District of Indiana.]

WILLIAM A. WOODS.

268 On this — day of ——, in the year of our Lord one thousand eight hundred and ——, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — day of ——, A. D. 187–.

—— ——.

The appellees, Francis M. Churchman and William H. Craft, acknowledge service of the within citation this 15th day of July, 1884.

McDONALD, BUTLER & MASON,
Att'ys for Appellees.

269 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of William Smith *et al. vs.* William H. Craft *et al.* as fully as the same appears of record and remains on file in my office.

Witnesss my hand and the seal of said circuit court this 16th day of July, A. D. 1884.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 49. William Smith *et al.*, appellants, *vs.* William H. Craft, Stoughton A. Fletcher, & Francis M. Churchman. Filed 27th September, 1884.

123-436

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United States Supreme Court.

WILLIAM SMITH, *et al.*
vs.
WILLIAM H. CRAFT, *et al.*

No. 49.

COMPLAINANT'S BRIEF.

BENJAMIN HARRISON,
HORACE SPEED,
Of Counsel.

Press of Wm. A. Patton, 7, 8 and 9 Blackford Block.

United States Supreme Court.

WILLIAM SMITH, *et al.*

vs. 49.

WILLIAM H. CRAFT, *et al.*

COMPLAINANT'S BRIEF.

This cause comes up on a certificate of division of opinion. Transcript, p. 128. In order to see the bearing of the pertinent facts in this case upon each other, we restate them from the certificate, but in order slightly different, as follows:

STATEMENT OF FACTS.

The defendant, William H. Craft, had been for many years prior to the 5th day of April, 1879, a merchant dealing in watches and jewelry in Indianapolis, and in good credit with the merchants of whom he bought goods in Indianapolis, and in the eastern cities. His bankers were the defendants, Fletcher

& Churchman. He carried a stock which, on April 5, 1879, inventoried about thirty-three thousand dollars ($33,000.)

Although he was and had been in good credit with merchants as a solvent dealer, yet in fact, since May, 1876, Craft had been in financial difficulties of which he told his bankers, these defendants; and in May, 1876, borrowed money of them in order that he might go east and make payments to his creditors. Subsequently to May, 1876, he had been compelled to borrow other sums of them in order to continue business; and in order to obtain these loans he had agreed with the Bank that if they would lend him the money, he would protect the Bank if anything occurred by which he was not able to pay his debts—that if he met with any losses, he would secure the Bank for the money so loaned. At this time his debts to eastern merchants were about $50, 000. These borrowings from the bank continued until in December, 1878,when they amounted to about thirty-three thousand dollars ($33,000)—a sum about equal to the value of his stock of goods. Besides his stock of goods he had no other property of any value. While obtaining these loans from the Bank, upon the promises just mentioned, Craft continued as theretofore, with the knowledge of the Bank, buying goods on credit from merchants in the east, without informing those merchants in any way that such an agreement had been made. Those merchants, including the complainants in this cause, continued to deal with him believing that he was solvent and entirely worthy of credit. Dec. 27, 1878, Craft agreed with his bankers that he would thereafter buy fewer goods but would apply all proceeds of sales on the bank claim. On April 5, 1879, Craft, who then owed for goods recently purchased about fifteen thousand dollars ($15,000), took an inventory of his stock, and finding that it about equaled his debt to the Bank, went to the office of his attorney, and sent for his Banker to whom he spoke of making an assignment. The Banker objected to that and insisted that he should keep his promises to prefer the Bank. Craft admitted having made the promises, and that he intended to fulfill them; and thereupon, a bill of sale was made out selling the stock to the Bank. That bill of sale

is set out at Transcript page 129–30. The consideration for that bill of sale shows that the bill was given in payment of the indebtedness, and upon the further consideration that Craft should continue the business at a salary of one hundred and fifty ($150) per month. Under that bill of sale, Craft was given employment as manager of the store for several months, when it was found judicious to close up the business. The complainants sold goods to Craft on credit while that agreement to prefer continued, but in ignorance of the agreement.

DIVISION OF OPINION.

The judges differed in opinion upon three points;

First, Whether a sale by an insolvent to one creditor of all that insolvent's property, where a part of the consideration is payment of a debt, and another part of the consideration is that the insolvent shall have a profitable employment from the purchaser, is fraudulent as to the other creditors of the insolvent.

Second, Whether an agreement between a merchant who is buying goods on credit, and his banker, that the merchant shall receive from the banker money on loan, not giving any security therefor at the time, but giving a promise that he will give a first security for the debt if he becomes insolvent or unable to pay all his creditors, is a fraud upon those merchants who thereafter, without knowledge of such agreement, in good faith, sell upon credit to that merchant.

Third. Whether as a conclusion of law from the facts stated the sale by C to the bank was fraudulent as to creditors.

ARGUMENT.

The complainants insist that these questions must be answered in the affirmative. They also insist that if this bill of sale could be given in pursuance of a prior promise to prefer and a then present contract for employment, it could, with equal justice, be given where both provisions were antecedent. So that if this agreement be valid, Craft could, with equal propriety, have agreed with the bank in the first instance that it should loan him money for use in a business where his purchases were on credit, and if in process of time, his business proved unprofitable, he would turn over to it enough of those goods to secure the bank debt and to justify the bank in giving him thereafter a

valuable employment. The statement of such a proposition condemns it. If it might be done, what struggling merchant would ever attempt, in real earnest, to pay his debts when by so simple a method he could exchange his then arduous position for one giving an assured support; and if the merchant could contract for one hundred and fifty dollars ($150) per month, who could deny his right to contract for two hundred dollars ($200) or three hundred dollars ($300), or five hundred dollars ($500) per month? And if for an indefinite time "so long as the business shall be carried on," why not for a more definite time, as for a year or two years, or ten years, or during life?

These questions have come repeatedly under the consideration of courts, and whenever fully argued, such provisions have been condemned.

THE PROVISION FOR EMPLOYMENT.

That such a sale by an insolvent of all his property, or even of part of it, where part of the consideration is that the insolvent shall be given a valuable employment, is fraudulent and will be set aside by the court, has been held in

McClurg v. Lecky, 3 Pen & W. 83-91.

Same case, 23 Am. Dec. 64.

Mackie v. Cairns, 5 Cowan 566-584.

Lukins v. Aird, 6 Wall. 98.

Weed v. Pierce, 9 Cowan 725-6.

Grover v. Wakeman, 11 Wendell 202-3.

In Mackie v. Cairns, *supra* at page 584, the court says "Is it law that every insolvent debtor may, by assigning all his property in trust, secure to himself an allowance of two thousand dollars ($2000) a year, or any other sum from his own property? If he may take $2000, why not $5000, and if for four years, why not for ten or twenty? The proposition offends the moral sense, shocks the conscience, and produces an exclamation." This is cited with approval in McClurg v. Lecky, *supra*.

Chancellor Kent, in Riggs v. Murray, 2 Johns. Chy. p. 582, discussing a similar provision, says, "If an insolvent debtor may make sweeping dispositions of his property, yet loaded with such

beneficial provisions for himself, it would be impossible for courts of justice to uphold credit or exact the punctual performance of contracts."

So this court in Lukins v. Aird, 6 Wall. at p. 80, says "If Spring could in this way pay part of the consideration, why not extend the term of the reservation and pay the whole of it? It makes no difference in the legal aspect of this case that the interest reserved was not of great value."

Lukins v. Aird cites as authority Paul v. Cooker 8 N. H. 288, which was a sale by an insolvent debtor to a preferred creditor of a yoke of oxen, part of the consideration, or at least a stipulation in the sale, being that the insolvent might continue to use them at a stated price per month "so long as the *vendee* should think fit." The price agreed on was a fair price for their use. The court set this aside as fraudulent because there was clearly a benefit, however indefinite, resulting to the grantor.

Analogous is R. R. Co. v. Howard 7 Wall. 392, where the preferred creditor, a mortgagee, vainly pleaded that his contract could not be objectionable seeing that his mortgage amounted to much more than the full value of the property.

The fullest discussion of this question is in McClurg v. Lecky, *supra*, to which we ask the attention of the court. The text books give the same rule.

Burrill on Assignments, 5 Ed. Sec. 198.

THE AGREEMENT TO PAY OR SECURE IN CASE OF INSOLVENCY.

That a parol agreement, like the one in this case, upon consideration of loans then being negotiated, "to pay or secure the lender at any time thereafter when the borrower becomes unable to pay all his creditors," is a chattel mortgage by parol and as mischievous as an unrecorded chattel mortgage held under an agreement not to record until the borrower becomes unable to pay all his creditors, and is an *actual fraud* on other creditors, is demonstrated in the reasoning of Judge Gresham in this case as reported in 11 Bissell, at pp. 348-9, and it has been expressly so held by the English court of Appeals and in the Chancery Division

Ex parte Fisher, 7 Ch. App. at pp. 644-5.
Ex parte Kilner, 13 Ch. Div. pp. 248 9.
Ex parte Burton, 13 Ch. Div. p. 108-9.
Ex parte Hauxwell, 23 Ch. Div. 638-642.
Ex parte Mackey 8 Ch. App. 648.
Ex parte King, 2 Ch. Div. 262-5.

It is not important whether the promise is binding in law or equity, if intended to be carried out.

Ex parte Wilkinson 22 Ch. Div. 788.

The subsequent cases all quote with approval the principle as stated in those cases. The opposite view of this question had been taken by V. C. Bacon in Fisher's case but upon more careful argument before the Lords Justices, the true rule was announced by them and has ever since been adhered to; V. C. Bacon himself, in a later case, Ex Parte Bolland, 8 Ch. D. 234, recognizing its correctness and declaring that his first judgment was erroneous.

The distinction between the principle in Fisher's case and in the cases upon which the defense rely, is very clear. It has been repeatedly decided in the bankruptcy courts and in equity cases that where at the time a loan is made, the borrower agreed to give a mortgage security for the debt, but *by accident* or for any innocent reason omits to give the mortgage at the time, equity and the bankrupcty courts will treat that as done which was agreed to be done, and (unless the recording acts forbid) uphold a chattel mortgage given in pursuance of that agreement even though executed on the day of bankruptcy.

R. R. v. Claghorn, 1 Spears Eq. S. C. 545.
Planters Bk. v. Whittle (Va.) 18 Rep. 568.
Ex parte Cohen, L. R. 7 Ch. App. at p. 23.
Burdick v. Jackson, 7 Hun. 490.
1 Leading Cas. Eq. at p. 541.

But while recognizing this rule the cases at the same time declare that if the agreement was conditional and not absolute, to give the mortgage only in case the borrower should become insolvent or if the lender should become alarmed about the bor-

rower's financial condition, the agreement will be treated as an *actual* fraud upon creditors who, without knowledge thereof, sold on credit to the borrower. This is expressly stated in Fisher's, Kilner's, Burtons and Hauxwells cases *supra*. U. S. District Judge Woods also in Lippincott v. Shaw, 25 Fed. Rep. 587 recognizes the binding and saving force of a promise made at the time a loan is made if the promise is absolute and for any innocent reason was unfulfilled until the eve of insolvency.

And taking the proposition upon the understanding which business men would have of it, what is such a promise but a private *assurance* and if the borrower is faithful to the promise, an *absolute security* equal to a written chattel mortgage that the lender shall be safe no matter what becomes of other creditors.

Would not any lender lend more freely and have a sense of greater security, and in fact have, in the majority of instances, a security although based only on their parol agreement? Equity, like the business world, presumes that a man will perform his agreements. It recognizes the fact then that in such a case as this, an embarrassed merchant who, after making such an agreement with his banker, buys goods on credit, has only a qualified intention to pay for them, and buys with the mental reservation that he will only pay *if* he has enough left after paying his bankers in full.

The moral quality of such an agreement becomes evident when we think of that merchant having made such a promise, practically covering, as in this case, the whole of his stock, going into the market and buying goods on credit without advising the seller what enormous prior debts must be first settled before he is paid. Any dealer making purchases on credit after such an agreement, under circumstances like the present, necessarily commits a fraud upon the person from whom he buys.

These secret agreements which give assurance to one creditor but no notice to another whereby that other is entrapped, have never taken root in this country. They grow out of an attempt to secure unmerited credit on the one side and security on the other. When they appeared in England they were condemned by Fisher's and the later cases. Bump, in his work on Fraudu-

lent Conveyances, 3 Ed. 181-2, having referred to certain cases where apparently counsel had argued and the court had denied that private agreements like the present were permissible, says "It is not an agreement but a conspiracy; such an exercise of the right to prefer simply constitutes the debtor an agent to obtain money from one man and bestow it upon another at his will and pleasure." And in Grover v. Wakeman 11 Wendell 217-219, Senator Tracy says "The facility of obtaining credit under such circumstances is in theory nothing more than a facility of committing fraud, and in practice it had proved no less." And Chancellor Kent, in Riggs v. Murray, 2 Johns Ch. 577-8, regretting that the theory of preferences had ever been recognized, and noting the frauds committed under pretence of preference, observes "Experience shows that preference is sometimes given to the very creditor who is least entitled to it, because he has lent to the debtor a delusive credit and that, too, no doubt, under assurances or a well grounded confidence of priority of payment and perfect indemnity in case of failure."

Now in Craft's case there was exactly this secret "agreement," and by it he did obtain a "delusive credit."

A case on all fours with Craft's as to *intents* and *effects* is Hilliard v. Cagle, 46 Miss. 309 (quoted and approved in Blennerhasset v. Sherman 105 U. S. 100) where a debtor made a *trust deed* to one creditor, a firm, which was not recorded because "It would impede and embarrass his business." p. 337. And the court says "Summers and Brannin (the grantees) desired that Baggett should continue his business as before, but at the same time they were anxious that they should be protected at all events and in any contingency. If any misfortune or calamity should fall on him, their purpose was to be secure, p. 337. Exactly the arrangement between Craft and Churchman and for the same purpose.

And again "It is shown that Baggett had the confidence of the community in his integrity and solvency, so much so that he was able to buy, in most instances on credit, and in others to ship for planters on his account, to pay over the proceeds on the return of sales * * * * The 'natural' and logical effect of

a knowledge by the public of the existence of this deed would be to destroy his credit and stop his business except for liquidation. * * * A concealment of the deed on the other hand would enable him to prosecute his business. He could buy merchandise on credit, keep his store full and deal largely in cotton. He might be able to pass through the active business season with unshaken credit and come out successful. At all events the explosion would be postponed until the speculative experiment had been tried. * * * But at whose risk was this to be done? p. 339." * * "It is not perceived how such an arrangement can operate other than injuriously to creditors and put them to great risk and hazard. Baggett was to purchase goods as usual (and the evidence shows this was upon a credit,) the deed of trust took effect upon all goods put in the house," p. 343.

"The arrangement between Brannin and Summers was antagonistic to the regular and usual course of business, tended to break down commercial confidence and credit, and to entail losses upon those who trusted their goods and property to the retail merchant. When this aspect of the subject is looked at in connection with the fact, that the transfer for the use of Summers and Brannin was to be kept secret, to be produced and take effect or not as his business might prosper or be unfortunate; the conclusion is ~~inserted~~ irresistible (however intended in the minds of the parties,) that it was fraudulent as to subsequent creditors." p. 344.

Blennerhassett v. Sherman 105 U. S. 100, quotes extensively and approves the above and several like cases, p. 119.

It also quotes Hungerfold v. Earle, 2 Vernon; Hildreth v. Sands 2 John. Chy. and that line of decisions to the effect that "A deed not at first fraudulent may afterwards become so by being concealed or not pursued by which means creditors are drawn in to lend their money." This doctrine has been repeatedly affirmed by other courts, p. 188.

It quotes also Neslin v. Wells, 104 U. S. 428, where this court says "Under the circumstances of the case there arose *a duty* on the part of Neslin, the vendor, to record his purchase money mortgage, toward all who might become subsequent purchasers for value in good faith, a breach of which in respect to

Kerr the subsequent mortgages, without notice, constituted such negligence and laches as in equity requires that the loss which, in consequence thereof, must fall on one of the two, shall be borne by him by whose fault it was occasioned." p. 121.

Blennerhassett v. Sherman also cites as authority Hafner v. Irwin, 1 Iredell Law (N. C.) which at p. 500, contains this doctrine in the same spirit. "Much has been done to obviate the mischiefs occasioned by these assignments of insolvent men, by the acts of Assembly, which denies them efficacy as against creditors but from the time of registration. This act is a legislative declaration that *secrecy* with respect to such instruments is against public policy. The courts of justice ought to act in furtherance of this policy. They should regard all *devices and shifts intended of purpose to surprise creditors by secret conveyance in trust*, though they do not fall within the letter of the statute, and therefore, are not avoided thereby, as conveyances denounced by the law. The time has come when, if possible, some plain rule should be laid down in regard to such conveyances "So simple that honest debtors cannot mistake it and fraudulent ones will be deterred from it violation by the certainty of defeat."

Now this concealment has, as was natural, drawn the complainants into a trap, to their injury; and the defendants should be required to make them whole before the defendants claim any part of that property which their device induced the complainants to sell Craft on credit. The necessary result of engagements such as Craft's is that he does business in the market on credit wholly at the risk of those who trust him.

The protection of credit has always been one of the cares of the legislature and the courts. Trade is built upon credit, the manufacturers and wholesale merchants sell invariably on credit; not one purchase in a thousand among them is for cash. This fact is known to everybody, and courts know it as well as do others. "The protection of credit" is a familiar phrase with the courts and is its sufficient explanation of many rules. The phrase is used by Chancellor Kent as above quoted, in Hilliard v. Cagle, and in the judgment of this court in Blennerhasset v.

Sherman. Credit would be impossible if courts should tel struggling merchants and watchful banks that such agreements as Craft's might be made and carried out.

We cannot believe that the three pages of the case of Blennerhasset v. Sherman, *supra* which quote and approve the foregoing ~~are~~ cases, are to be treated as *obiter dicta*, as was declared on the rehearing below.

As already suggested, the parol agreement between Craft and Churchman, that in case he should become unable to pay all his creditors, he would secure the Bank, was, as between those men, just as much a security as if a mortgage had been actually executed at the time. The promise morally bound Craft; Churchman relied on the promise and was not mistaken in his man. In such cases, it is always essential that the parties shall trust each other; no scheme of that kind can be successfully carried out without such mutual confidence. It was just as proper, and no more proper, that Craft should make such a promise and that Churchman should rely on it as if Craft had then and there made a mortgage on the stock to Churchman and the latter had agreed to withhold it from the record. In that case, the mortgagor would have been compelled to trust the mortgagee instead of the mortgagee trusting the mortgagor; and yet that is just the case which the Court of Appeals in Maryland held was a fraud and the mortgage, so made under a promised of the mortgagee to withhold it, and which was withheld and renewed from time to time until finally the last renewal was put of record, was adjudged fraudulent and void as were all renewals thereof.

Gill v. Griffith, 2 Md. Ch. 270.

And not only was this so held by the Maryland Court, but it is sanctioned directly by this Court, as are all the other cases above cited in Blennerhasset vs. Sherman, 105 U. S. *supra*.

If it is fraudulent for a mortgagor thus to put himself and his property in the hands of his mortgagee, trusting simply to a parol agreement for the protection of his interests, why is it not equally fraudulent for the mortgagee to trust the property, upon which he has an assurance of security, in the hands of the mortgagor upon a simply parol agreement? The purpose in both

cases is exactly the same,—to help the mortgagor and the mortgagee in a scheme for their own advantage at the expense of strangers to the transaction.

The complainants' right to relief in this case did not rest solely upon either one of the wrongful acts above discussed separately. It is not a case where an agreement, otherwise in all things *bona fide*, is made between an embarrassed debtor and a creditor, in which agreement, perhaps by inadvertance, a provision has been made for the benefit of the debtor; nor is it a case where, in a transaction, otherwise apparently fair, an agreement has been made by a debtor that, in case of trouble, he will prefer a particular creditor; but these agreements are both in the same transaction and each throws a light upon the other and illustrates its purpose; and coupled with both of them is the further agreement, found by the Court, that, at the very time the debtor was borrowing this money and making these promises to give a preference or secure the Bank in case of trouble, it was being stipulated that he (the debtor) should continue to buy goods, although it is said, not so heavily as theretofore, but, "should apply the proceeds of his sales, as far as practicable, in reducing the debt to the Bank." Nothing said about applying the proceeds to the payment for the goods so to be bought; nothing thought of the equity that the merchant, whose goods were thence forward brought into the store, should have his pay for the goods before any of the proceeds should go to discharge the old debt to the Bank; but only that Craft should buy the goods and apply the proceeds to pay the debt to the Bank.

Would a written contract embodying these three stipulations be permissible as against creditors selling in ignorance of them. If not, is the contract any less noxious because it was the unwritten agreement and intention?

This, then, is the whole transaction:—Churchman and Craft agreed, at a time when Craft had a debt to eastern creditors of nearly as much as he represented his entire stock to be worth (debt to eastern creditors, $50, 000.00 and stock represented by him to be $60,000.00,) that the Bank would loan Craft money from time to time in his business; that he should buy goods,

though "less heavily" than theretofore; that he should apply the proceeds of the sales of those goods, as far as practicable, to pay the Bank and that in case of loss or inability to pay in full, he would secure the Bank; and on this agreement and according to this agreement, the business went on until the very emergency contemplated happened, when he did, in pursuance of the plan on which they had been jointly operating for years, secure the Bank by transferring his entire stock, but at the same time reserved in that very security, a stipulation for his own benefit: a stipulation which this Court has said renders the transaction fraudulent without reference to the amount of such benefit.

Lukins vs. Aird, *supra*.

Nor was that benefit a small one; it was a reservation to himself of employment at the rate of $1800.00 a year for a period, which, so far as the agreement was concerned, might have been years. In Lukins vs. Aird, the reservation was small and as to all, except the rent for one year which was apparently only $100.00, was entirely dependent on the will of the grantee. This Court says: "If Spring could, in this way, pay part of the consideration, why not extend the term of reservation and pay the whole of it. It makes no difference in the legal aspect of this case, that the interest reserved was not of great value. It is enough that it was a substantial interest for the benefit of the grantor, reserved in a manner which was inconsistent with the provisions of the deed." In Paul vs. Cooker, 8 N. H. 288, the reservation was only of the use of a yoke of oxen at a fair price and during the pleasure of the vendee, yet it was held a fraud. So here: the reservation of this employment at a salary of $150 a month, stated in the very agreement itself to be a part of the consideration, is inconsistent with the theory that this property was turned over by Cratt to Churchman for the simple purpose of paying this debt and in the light of the previous agreements between the parties, is conclusive that it was a part of the scheme upon which they had been acting together for years, each for the benefit of the other at the expense of the general creditors.

Respectfully submitted,

BENJAMIN HARRISON,
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Of Counsel.

123-436

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IN THE

Supreme Court of the United States.

No. 49.

WILLIAM SMITH ET AL

vs.

WILLIAM H. CRAFT ET AL.

Appellant's Brief upon Questions Arising During the Argument.

I.

The questions as to the certificate and as to the fraud in law are answered in the memorandum submitted in the Knight case, No. 48.

II.

The question whether the English cases which hold that agreements to secure in case of insolvency are fraudulent are not based on bankruptcy law, is answered by the statement in the cases that it is *actually* fraudulent because it gives a false credit.

The same answer is given, with the same reason, in

Bump Fr. Conveyances, 3d ed., 181–2.

Grover *vs.* Wakeman, 11 Wend., 218–19.

III.

As to the question whether the employment of Craft was upon a consideration moving to Craft or to Churchman the statement of facts and the contract both expressly say the consideration ran to Craft, was for his benefit, and appellees in their brief do not controvert that fact.

IV.

As to the question whether the debt being about equal to the stock of goods the provision for employment could be complained of by creditors, the rule is that the parties believed there was a surplus, they contracted with reference to it, and cannot now defend on the ground that in fact there was none.

Barney *vs.* Griffin, 2 Comst., 371.
Goodrich *vs.* Downs, 6 Hill, 438–40.

V.

As to this being merely a contract for preference, the cases all state that a preference cannot be contracted for, and that what is given under contract is no preference.

Grover *vs.* Wakeman.
11 Wend., 202.

Preference is merely the chosing by one who knows he cannot pay all his creditors, which debts he will pay. It must be his free, unbought choice.

It is not a right which he may make profit out of for himself.

Haydock *vs.* Cope, 53 N. Y., 73.

Respectfully submitted,

HORACE SPEED,
Of Counsel.

123-436

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JAMES H. MCKENNEY,

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OF THE

UNITED STATES.

OCTOBER TERM, 1887.

WILLIAM SMITH, ET AL.,
Appellants,
v.
WILLIAM H. CRAFT, STOUGHTON A. FLETCHER, and FRANCIS M. CHURCHMAN.

No. 49.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLEES,

J. E. MCDONALD,
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BY J. E. MCDONALD AND JOHN M. BUTLER.

STATEMENT OF FACTS.

Smith and others, judgment creditors of William H. Craft, filed their bill in chancery in the nature of a creditor's bill against William H. Craft, the debtor, and Stoughton A. Fletcher and Francis M. Churchman, representing Fletcher's Bank. The object of the bill was to set aside the sale made by Craft of his stock in

trade and lease of premises to Francis M. Churchman for the benefit of the Bank, and in settlement of his debt to the Bank, and to charge the purchasers, as Trustees, for the value of the property received under said sale. Other judgment creditors came in and became parties to the proceeding.

The defendants answer the bill under oath, admitting the purchase of the property, but denying that the purchase was fraudulent, and denying all other material allegations of the bill.

The cause was referred to the Master in Chancery to take evidence and report the same with findings thereon to the Court. Record p. 15.

The report of the Master sustained the validity of the sale, and exceptions were filed by the complainants, which, upon hearing before Judge Gresham were sustained, Judge Gresham sitting as Circuit Judge, and a decree entered in favor of the complainants setting aside the sale, and for relief generally prayed for in the bill. Record pp. 111–113.

A petition was filed for rehearing, which petition came on for consideration before Justice Harlan and William A. Woods, District Judge, who had succeeded Judge Gresham, and pursuant to agreement made in open Court, the petition for rehearing, was set down for hearing before Judge Woods, to be heard *de novo* upon the bill, answer, replication, Master's report, and all evidence heard by the Master and filed with his report. Record p. 121.

On the petition for rehearing, it was ordered by Judge Woods that the petition be granted, and that the cause be reheard *de novo*. Record p. 123.

Pursuant to this order and decree the cause again came on for final hearing before the Honorable Thomas Drummond, Circuit Judge, and William A. Woods, District Judge, sitting together. Upon the second hearing, the Court found the equity of the cause to be with the defendants, and entered a decree dismissing the bill at the costs of the complainants. Record p. 128.

Following the decree is a certificate signed by Judge Drummond and Judge Woods, in which a division of opinion is stated upon three points arising from facts found by them and embraced in the certificate. Record pp. 128–132 inc.

None of the judgments upon which the bill is based equal in amount the sum of $5,000, and consequently this cause was not appealable under the general law, and is only here upon what purports to be a certificate of division of opinion between the Judges sitting at the last hearing.

These points are thus stated in the record.

"*First.* Whether the understanding between the said Churchman, representing the said bank, and the said Craft that if the said bank would loan the said Craft money from time to time, and that if anything should occur by which he, the said Craft, was not able to pay his debts he would secure the bank, constituted a fraud upon the said Smith & Co. and other creditors named in the said bill of complaint, so as to invalidate and render void the said sale of the said stock of jewelry and the assignment of the lease so afterwards made to the said Churchman for the use of the said bank.

"*Second.* Whether the 'further consideration' mentioned in said bill of sale by which the said Craft was employed in said business for a compensation at the rate of $150 per month so long as the said Churchman for the said bank should continue or carry on said business, was fraudulent as to the said Smith & Co. and the other creditors of the said Craft, and whether said stipulation vitiated and rendered void said sale made to the said Churchman for the said bank as to the said other creditors of the said Craft.

"*Third.* Whether, as a conclusion of law from the above facts which are found by the Court, the said sale by the said Craft to the said Churchman for the use of the said bank was and is fraudulent and void and made to Churchman for the bank with the intent to hinder or delay the said Smith & Co. and the other complaining creditors of the said Craft." Record pp. 131, 132.

QUESTIONS OF LAW.

HAS THIS COURT JURISDICTION OF THE QUESTIONS CERTIFIED?

I.

The first question arising on the record relates to the jurisdiction of this Court. To give this Court jurisdiction under the statutes authorizing a certificate of division of opinion, the difference must be real, and if the record shows the contrary the appeal will be dismissed.

See *Railroad Co.* v. *White*, 101 U. S. 98.

Under section 650 Revised Statutes, the final decree in a case of this class must be in accordance with the

opinion of the presiding Judge, and therefore is, in accordance with the judgment of the Circuit Judge, sitting Judge Drummond. The record shows that the District Judge sitting at the hearing—Judge Woods—had granted a rehearing after the cause had been decided in favor of the complainants by his predecessor—Judge Gresham, and while neither the opinion of Judge Gresham, nor the opinion of Judge Woods overruling that opinion, are embodied in the record it very clearly appears from the ruling of Judge Woods that his views were in favor of sustaining the sale, particularly upon the points embraced in what is called the certificate of opposed opinion, and the case would seem to fall precisely within the rule laid down by this Court in the case of the Railroad Company above cited. In that case this Court used the following language:

"If the judges below are not able to agree upon the decision of any question of law which is material to the determination of a cause presented to them, our jurisdiction may be invoked to settle the difference; but in such cases, if it appears upon an examination of the whole record that no such disagreement actually existed we ought not to consider the question, even though it may be certified in form."

We think that the concurrence of Judge Woods in the opinion with that of Judge Drummond rendering the decree in favor of the defendants, is fully shown by this record in the following order:

"This cause coming on to be heard before the Honorable William A. Woods, District Judge, upon the petition for a rehearing filed herein under the order of Court

of May 11, 1883, and the same having been heard and fully considered—

It is ordered that said petition be granted and that this cause be reheard *de novo* upon the bill, the answer, the replication, the evidence, the Master's reports, and the exceptions thereto, and that the interlocutory and final decrees entered herein, dated June 9, 1882, August 16, 1882, and March 12, 1883, be in all things set aside and vacated, and plaintiffs now amend their bill by leave of Court, which amendment is now filed as follows, to-wit:" Record p. 123.

This view is conclusively established by reference to the opinion rendered by Judge Woods,—see 17 Fed. Reporter, p. 705, printed in full in the appendix to this brief, which completely answers the opinion of his predecessor, Judge Gresham, rendered in the same cause and published in 11 Bissell, 340.

II.

The statute under which the certificate was prepared gives this Court jurisdiction over points of law arising at the trial in respect to which the Judges sitting at the trial have differed, and not over the whole case.

"Each question certified must be one of law, and not of fact, nor of mixed law and fact, and that it must be a distinct point or proposition, clearly stated, and not the whole case, nor the question whether upon the evidence the judgment should be for one party or for the other."

Williamsport Bank v. *Knapp*, 119 U. S. 357. Opinion by Justice Gray.

In support of this proposition the learned Judge cites *Saunders* v. *Gould*, 4 Pet. 392; *United States* v. *Bailey*, 9 Pet. 267; *Weeth* v. *New England Mortgage Co.*, 106 U. S. 605; *California Paving Co.* v. *Molitor*, 113 U. S. 609, 615–617; *Waterville* v. *Van Slyke*, 116 U. S. 699–704.

In the light of these decisions, it is not necessary to discuss the third point certified, as that clearly and without disguise submits the whole case, and this seems to be admitted by the appellants in their brief, as no reference is made to that proposition. But it also clearly appears that the first and second points are obnoxious to the same objection, as the answers to these propositions necessarily involve the whole question, and are but restated in a single proposition in the third point certified. This is undoubtedly true, unless the Court is to deem the statement of facts, which may be deemed in one sense the finding of facts by the Court below, as in no manner to be considered in the consideration of the proposition stated, for, if that statement of facts is to have any bearing upon the solution of the first and second propositions, it necessarily calls upon this Court to pass upon questions of mixed law and fact, which, under the decisions cited, it has no power to do.

If the first and second questions can be treated as questions of law, it must be because the points therein stated raise the single and simple question as to whether the sale made to Churchman for the Bank was vitiated and rendered void by the facts stated in these propositions; that is, whether those facts constituted fraud *per se*. The statutes of Indiana declare but one class of sales of personal property presumably fraudulent. The section of the statute containing this declaration is as follows:

"Every sale made by a vendor of goods in his possession or under his control, unless the same be accompanied by immediate delivery, and be followed by an actual change of the possession of the things sold, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or subsequent purchasers in good faith, unless it shall be made to appear that the same was made in good faith and without any intent to defraud such creditors or purchasers." R. S. Ind., 1881, Sec. 4911.

Section 4924 of the same statute, being the Indiana statute of frauds, declares that the question of fraudulent intent in all cases arising under the provisions of this act shall be deemed to be a question of fact. This being an Indiana contract, these declaratory acts, so far as they may differ from the general law in regard to sales of personal property, must control in this case, and would seem to close the discussion, as the questions stated do not certainly present questions of law that would invalidate the contract of sale under those statutes. But we insist, independent of the statutory provisions above cited, that there is nothing in either of the points that can, of itself, operate to defeat the sale otherwise unimpeachable, for that is the view, we insist the Court must take of these questions.

The point raised by the first question, namely, the understanding between Churchman and Craft as to securing the Bank in the event of Craft's failure, was, in a case involving almost the same identical state of facts, fully considered by the Court of Appeals of the State of New York, and in passing upon it the learned Judge used the following language:

"We do not think that the promise of the defendants to make a preferential assignment in favor of Whiting was in law a fraud upon other creditors, or that it was so far conclusive evidence of fraud as to avoid the assignment made in pursuance thereof. * * * A failing debtor may make an assignment preferring one or more creditors because he is under a legal, equitable or moral obligation to do so, or he may do it from mere caprice or fancy; and the law will uphold such an assignment honestly made. If he may make such an assignment without any antecedent promise, why may he not make it after and in pursuance of such a promise? How can an act otherwise legal be invalidated because made in pursuance of a valid or invalid agreement honestly made?"

National Park Bank v. *Whitmore, et al.* 104 N.Y. 297.

In support of his opinion the learned Judge cites the opinion of Judge Woods in *Smith, et al.* v. *Craft*—this case—which opinion we have printed in full in our appendix to this brief, and also *Walker* v. *Adair*, 1 Bond (U. S. Cir. Ct.,) 158; *Anderson* v. *Lachs*, 59 Miss. 111; *Spaulding* v. *Strang*, 37 N. Y. 135; S. C. 38 N. Y. 1; *Haydock* v. *Coope*, 53 N. Y. 68. The only authority cited against it is that of *Smith* v. *Craft*, (Judge Gresham) 11 Bissell 340.

As to the point stated in the second question, namely, the employment of Craft, the decisions are equally satisfactory, and the Indiana cases particularly.

Wilcoxon v. *Annesley*, 23 Ind. 285.

Hall, et al. v. *Wheeler*, 13 Ind. 371.

Griffith v. *Cranston*, 1 Bosworth, 281.

In 23 Ind., *supra*, page 295, the learned Judge uses this language:

"Where, as in this case, the purchase was of a stock of goods in a store, and an established trade existing, it seems but reasonable that, at a fair salary, the grantor might be employed, for a time at least, to continue in charge of the business, and that circumstance will not in itself prove the transaction fraudulent."

To the same effect is the case in 13th Ind. The language of the learned Judge is as follows:

"So, it was not necessary that the assignors should be permanently excluded from the possession. They might be permitted to act as the agents of the assignee. The circumstance might excite suspicion, but not conclusively prove fraud. It would be a question of notoriety and good faith," citing Burr. on Assignments. This Court in a very recent case, *People's Saving Bank* v. *Bates*, 120 U. S. 556, has on principle sustained this same view, in holding that questions of like character arising under similar statutes to those of Indiana, are questions of fact for the jury, and do not constitute fraud *per se*.

If, then, this Court can take jurisdiction of the questions certified, we confidently insist that the answers in each case must be in the negative.

We have given a careful consideration to the brief filed by the appellants, and find nothing in their arguments, or in the authorities cited that requires any special consideration as in any manner affecting the positions assumed by us.

The leading case relied on by the appellants seems to be that of *Riggs* v. *Murray*, 2 Johnson's Chan. 577, 578, and particularly the opinion of Chancellor Kent, as contained in that decision. The Court will notice that notwithstanding the strong bias which the Chancellor entertained against the whole doctrine of preference, he fully upholds the law as settled, that such preferences are legal, and, as a matter of course, the debtor is at full liberty to choose whom he will prefer. Without that right there could be no preference.

We therefore confidently submit that this case should be dismissed for want of jurisdiction, or that if the questions stated are to be answered at all, they are to be answered in the negative.

J. E. McDonald,

John M. Butler,

Attorneys for Appellees.

APPENDIX.

Woods, J. Craft, being insolvent, made a transfer of his goods in trust to Churchman in payment of his indebtedness to Fletcher & Churchman, his bankers. This is an action by other creditors of Craft to set the transfer aside, and to have Fletcher & Churchman declared trustees, and, as such, accountable for the value of the goods. There are two grounds upon which, in argument, it is claimed that the transfer was unlawful and invalid. *First*, because of the stipulation in the writing by which the agreement was effected for the employment of Craft by Churchman; and, *second*, because of the promise made by Craft to Fletcher & Churchman, when obtaining credit with them, "that he would protect the bank if anything ever occurred by which he was not able to pay his debts; that if he met with losses he would secure the bank, if the bank would loan him money from time to time."

As to the agreement for employment, it may be observed that it was for no definite time, and was liable to be terminated by either party at will. Besides, it does not appear at whose instance, nor for whose benefit, the stipulation was made, fraud is not to be presumed, and for all that is shown, Craft may have passed by opportunities for employment on better terms, in order to aid Fletcher & Churchman to make the best of the stock

of goods, which, it was shown, was inadequate to pay in full the debt upon which it was taken. The fact that Craft had failed in the management of the business as owner, is no evidence of the value of his services in the capacity in which he was employed. It cannot, therefore, be said that this stipulation was extorted for Craft's benefit, and as a condition upon which the preference of Fletcher & Churchman over other creditors was granted.

As to the promise to secure the bank, it is insisted that this was in the nature of a secret lien, and that the tendency of the transaction was to give Craft a delusive credit, and that as the parties must have all known this tendency, they must all be held to have intended, indeed, to have contrived a fraud upon all who should thereafter deal with Craft upon credit. The argument is plausible, but in my judgment not sound.

In the first place, the promise to secure the bank had no force in law, and gave no additional sanction to the obligation of the debtor, beyond what was involved in the contracting of the debt, though there are some decisions under the bankrupt law which hold that a security given in fulfillment of a previous parol promise will make good a preference which otherwise would have been declared unlawful. Bump, Bankr. (9th Ed.) 806; *In re Wood*, 5 N. B. R. 421. Such, indeed, seems to be the established English rule. See statement of Lowell, J., *In re McKay*, 7 N. B. R. 230–233; S. C. 1 Low. 561. Other cases, however, are to the effect that such an oral promise to give security is nugatory, and creates no obligation. Bump, *supra*, and cases cited. If of any

binding or legal force between the parties, it is evident that the fulfillment of such a promise could not be deemed a fraud; but if of no force in law, then, except as it binds the individual conscience of the debtor, it cannot effect the exercise of his right to prefer one creditor over others; it can operate only as a motive by which the debtor may or may not in the end be controlled. But in respect to the right to prefer, it is settled law that the debtor's motive for his preference cannot be inquired into.

In *Grover* v. *Wakeman*, 11 Wend. 195, decided in 1883, and often cited, it was said:

"The right to prefer may originally have been sustained in part upon the supposition that just and proper grounds of preferences did in most cases exist; and would be duly regarded by the debtor; but whatever may have been the reason or foundation of the rule, it is one of that numerous class of cases in which the rule has become absolute, without any regard to the fact whether the reason on which it was founded exists or not in the particular cases."

—And while in *Riggs* v. *Murray*, 2 Johns, Ch. 564, Chancellor Kent strongly condemns the inequalities and wrongs of preferences given sometimes "to the very creditor who is least entitled to it, because he lent to the debtor a delusive credit, and that, too, no doubt, under assurance, or a well grounded confidence, of priority of payment, and perfect indemnity in case of 'failure,'" he adds, in the same connection: "I do not question the legality, however I may doubt the policy, of the rule which sanctions such partialities."

In no case or book cited has it been decided or said that merely because the borrower, at the time of procuring a loan or credit, had made an oral statement or promise that he would secure or prefer the one who gave such credit over others, he thereby disqualified himself from giving, and the creditor from receiving, the promised favor; and I am not able to agree that such is the law. If it be, then, instead of confining their prayer for relief to the goods in question, the plaintiffs might as well have asked that Fletcher & Churchman be held to account for all payments made to them upon their loans to Craft; for if the payment in goods was unlawful, payments in money were equally so, and, if necessary, should be brought under the same trust which it is sought to fasten upon the goods.

Carried to its logical consequences, the doctrine contended for made it impossible that Fletcher & Churchman, as against the plaintiffs or other creditors of Craft in the same situation, could have lawfully accepted payment from Craft upon the loans which they made him, so long as he was unable to pay the plaintiff and like creditors in full; and this would be so irrespective of the good faith of the parties, and notwithstanding the validity of the debt, its full consideration, and every other feature of merit, except only the fatal promise to prefer, the taint of which, once it had attached, it would seem, could in no manner be escaped. If it be the law that an express promise to secure or prefer a loan cannot be performed, it must be that an implied promise, or tacit understanding, would have the same effect; and, whether or not there was such an understanding in each

case, as it arises, must be a question to be determined usually upon circumstantial evidence. Upon such an inquiry, the personal and business connections, and even the social and domestic relations of the parties, might be deemed significant; and so the facts which afford the best motives for a proper preference might be converted into proof that the preference was given in consummation of an unlawful understanding or assurance given when the credit was obtained. Such a doctrine, if established, instead of constituting a healthful restriction upon the right of preference, would amount to a practical denial of the right in the cases wherein, if in any, it may be meritoriously exercised.

I do not doubt that a promise to secure or to prefer a creditor, made at the time the credit is given, may be fraudulent, but it must be when a fraud is intended, or when the circumstances within the knowledge of the creditor are such that he must know that injury to others will probably result. But when, as in this case, the debtor was doing an apparently prosperous business, though largely on credit, and advances were made to him without a belief, or any imperative reason for the belief, that he was, or was likely to become, insolvent, it cannot, in my judgment, be said that a promise to protect, if disaster should come, cannot be performed. It may be true that such a loan gives a delusive credit, and is in the nature of a secret lien; but the loan itself, without the promise of protection, unless published to the world, gives a delusive credit; and while, as already shown, there is no lien in fact, because such a promise, especially when made in the general terms employed in

this instance, has no legal force, the law by no means condemns every transaction in the nature of a secret lien. In this state conditional sales are upheld, and every factor, commission merchant, or bailee of goods is clothed with the apparent ownership of property which is not his, and yet the secret rights of the real owner are protected.

A mortgage, if on real estate, may be kept off the record for 45 days, and a chattel mortgage for 10 days, without impairment of the lien, unless done with a fraudulent intent, though the mortgagee in every such instance must know that his failure to record may result in injury to others. As, in such cases of actual liens, the omission to record is not a fraud unless fraud was intended, much more is it no wrong to receive a mere promise of security, which may or may not be performed, and give no notice of it, if done without active concealment and without fraudulent intent. This is the doctrine of *Blennerhassett* v. *Sherman*, 105 U. S. 100, as I understand the decision in that case, in so far as it is applicable to the present discussion.

In the case of *Hilliard* v. *Cagle*, 46 Miss. 309, which is urged upon my attention, there was such concealment of the trust deed as to justify the conclusion reached in the case; but, as it seems to me, neither the decision rendered nor the discussion upon which it is based is applicable with much, if any, force here. But while I have thus indicated my views upon the two propositions stated, I do not find it necessary to have decided upon either of them, because they are not embraced in the averments of the bill. The substance of the charge of

fraud contained in the bill is in the averment to the effect that, knowing Craft's insolvency, the defendants (including F. & C.) did not make it known, but concealed it from the plaintiffs and others, who became creditors of Craft; that they made a pretended sale of the stock of goods in payment of a pretended debt; that Craft continued in possession of the goods and made sales thereof, applying a part of the proceeds to his own use, and a part to the use of Fletcher & Churchman, with their consent and at their request; that the defendants, and each of them, knew that Craft's purchases of the plaintiffs and others were being made upon a credit, and upon misrepresentations by Craft as to his financial condition; that said pretended sale was without consideration, and was effected by the defendants with the intent to hinder, delay, and defraud the plaintiffs and other creditors of Craft; and that if Craft was indebted to Fletcher & Churchman it was kept secret and concealed by them with the intent that Craft should have and retain credit with the plaintiffs and other dealers. These averments, as made, are not proven; or, to say the least, the evidence is not such as to warrant the Court in setting aside the conclusion of the Master that they are not proven, and they are not comprehensive enough to embrace the grounds upon which counsel for the plaintiffs predicates and presses their right of recovery. The bill contains no suggestion that the writing by which the transfer of the stock was evidenced was void on account of any stipulation contained in it; nor is it indicated by any averment, or by the entire bill, that the sale was void because of the promise made to

Churchman, when credit was extended, that, in event of disaster, the bank should be protected.

My conclusion is that the exceptions to the Master's report should be overruled and the bill dismissed.